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Proceedings

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IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1889.—Ordered to be printed.

Mr. BROWN, from the Committee on Foreign Relations, submitted the following

REPORT:

[To accompany bill S. 2632.]

VIEWS OF THE MINORITY.

[The references in this report to the Appendix, which is printed with the majority report, are to the top paging.]

Under a resolution of the Senate, passed August 30, 1888, a subcommittee of the Committee on Foreign Relations has been engaged in taking testimony respecting the claim of La Abra Silver Mining Company against the Government of Mexico until the closing days of the Fiftieth Congress. The last witness was examined in the afternoon of the 27th of February, and his testimony, comprising the last thirty-two pages of the record of the subcommittee's proceedings, was not printed until the 2d of March. The report of the majority of the committee was submitted to the Senate on the 1st of March, with the testimony, which was ordered to be printed as an appendix, and leave was granted for the printing of the views of the minority. (Congressional Record, March 2, 1889, p. 2753.)

The appendix, containing nearly a thousand printed pages, comprises not only the oral examination of witnesses who have testified in the course of this investigation, but also a transcript of the alleged original press-copy book kept at the office of the Abra Silver Mining Company, at its mines in Mexico (pp. 236-318); certain original letters of David J. Garth, treasurer of the said company, addressed to Charles H. Exall, superintendent at the mines, in the year 1867 (pp. 318-322); certain original letters of the said C. H. Exall, addressed to James Granger in the spring and summer of 1868 (pp. 322-326); the memorial and evidence submitted by the said La Abra Company to the United States and Mexican Claims Commission, comprising the certificate of incorporation of the said company, the titles to its various mines in Mexico, and the depositions submitted in support of its claim, together with the depositions submitted in opposition by the Mexican Government to the said Commission (pp. 328-499). The testimony of witnesses who have been examined orally by the subcommittee comprises the first two hundred and thirty-five pages of the appendix, and also extends from page 502 to page 971.

The Mexican Government was represented in the investigation by its counsel, the Hon. John W. Foster, late United States minister to Mexico, and Mr. Robert B. Lines, formerly of the Department of State. La Abra

Company, by its counsel, filed a protest with the subcommittee against the proposed proceedings, which will be found on pages 2 and 3 of the appendix, closing with the statement that "their presence at and their participation in the investigation is only resorted to because of their respect for the Senate." The grounds on which the Mexican Government participated in the investigation were stated by Mr. Foster as follows:

Mexico's interest in this investigation is this: She recognizes that this is a *domestic investigation by Congress*, but she has proof of fraud and perjury, alleging that this award was obtained by fraud and perjury. Upon the invitation of the committee we are present this morning to sustain, as far as we can, that allegation by our presence, and, if possible, maintain the position which Mexico has assumed on this question, so that you may have the benefit of whatever information or assistance we can give you in establishing that claim of fraud and perjury. I think that is a sufficient answer to the gentleman as to our position here to-day. We do, upon the invitation of the committee and with the consent of the State Department, appear here to represent Mexico in this investigation. (Appendix, page 4.)

At the same sitting the chairman said:

The investigation which the subcommittee is conducting under the order of the Senate and the order of the full Committee of Foreign Relations is one simply of examination to ascertain, as I understand, whether or not it is the duty of Congress to order this money to be paid over to La Abra Silver Mining Company, or make some other disposition of it, or have some investigation in a court of a more formal character than this can possibly be upon the real character of this award, whether it was obtained by fraud or perjury or whether it was obtained upon reliable testimony. * * *

Our present intention is to take testimony and lay before the full committee what we arrive at, and probably express our opinion upon its general merits when we come before the committee. (*Ibid.*, p. 5.)

The purpose of the investigation—the question to be considered by the committee and Congress—is thus expressed in the majority report (p. 2):

Whether the evidence presented by the Mexican Government to show that the award made by said commission in respect of the claim of La Abra Company was procured by fraud, and (whether) the testimony taken by the committee, under the authority of resolutions of the Senate herein referred to, *is of such a character as to require investigation by a competent tribunal to determine whether the United States in presenting the claim of La Abra Company to the Mixed Commission was not made the victim of fraudulent imposition.*

Under the aforesaid resolutions of the Senate, an opportunity has been granted to the Mexican Government, at the expense of the Government of the United States, to impeach or surcharge the award which was rendered in favor of La Abra Company by Sir Edward Thornton, as umpire of the United States and Mexican Claims Commission, on the 27th of December, 1875. This gives great importance to the new testimony which has been taken, and requires that it should be carefully and impartially examined.

Before considering whether the aforesaid investigation has so impeached the award as to justify any attempt to set it aside, and waiving for the present the question whether Congress can properly interfere in such a matter, as proposed by the aforesaid bill (S. 2632), the undersigned desires to state certain propositions which he thinks are not disputed:

(1) The integrity of the Commissioners, or of the umpire, appointed under the treaty of July 4, 1868, to decide upon the claims of citizens of the United States against Mexico and of citizens of Mexico against the United States, and who made the award in favor of La Abra Company, is not and has never been questioned.

(2) The Governments and the individuals concerned had ample time in which to present their evidence to the Commission. The existence

of the Commission was extended by various conventions until November 20, 1876. The first depositions in support of the claim of La Abra Company were taken late in the year 1869 or early in 1870, and filed with the memorial or petition in the summer of that year, and the taking and filing of depositions continued on the part of the said company until the spring of 1874. Some of these depositions were in rebuttal of the evidence which had been taken on behalf of the Mexican Government in 1870 and subsequently, and which had been submitted by the Mexican agent to the Commission in October, 1873. As has been noted, the award of the umpire in this case was not made until the 27th of December, 1875. There is no complaint on the part of Mexico of surprise or want of notice or lack of time in conducting its defense. Upon these points Mr. Evarts, while Secretary of State, expressed his conclusions to the President as follows:

I am of opinion that as between the United States and Mexico the latter Government has no right to complain of the conduct of these claims before the tribunal of commissioners and umpire provided by the convention, or of the judgments given thereupon, so far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity, in time and after notice, to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measure, and the means of the defense against the same. (Mr. Evarts to the President, August 13, 1879.)

(3) It is admitted that La Abra Company, composed of citizens of the United States, and organized under the laws of the State of New York in the year 1865, purchased mines in Mexico, to wit: "La Abra," "La Luz," "Rosario," "Arrayan," "Ynocentes," "La Talpa," and "El Sauz," near Tayoltita, for \$72,000, and thereafter built extensive and expensive works for carrying on its business of mining, and conducted its operations at Tayoltita, in the mineral district of San Dimas and State of Durango, from the fall of 1865 to the spring of 1868. This is not a case in which it is claimed, as in the famous Gardiner case, that the property for the value of which an award was rendered had no existence in fact. The Mexican Government does claim that the umpire set too great a value upon the ore which was left on the company's "patios" when its mines were abandoned, and does deny that the company was forced to abandon its property in Mexico by the unlawful acts or omissions of the Mexican authorities or people.

(4) The question of the value of the company's property, and the question whether the company was compelled to abandon that property by the unlawful interference of the Mexican authorities or their failure to protect the company against unlawful acts of the Mexican people, were the main questions at issue before the Commission, and it was to these two questions that the great bulk of the testimony on both sides was directed. There was no misunderstanding or misconception of the issues involved in this international trial, and, as previously observed, it extended over five years, and a mass of evidence was presented on the part of each Government in this particular case.

(5) All of the testimony submitted to the Commission by the Mexican Government was taken in Mexico, the witnesses were Mexicans, the officer who directed the proceedings to obtain the defensive depositions for the Mexican Government was a Mexican, and the magistrates before whom these witnesses were examined were Mexicans.

Much of the testimony on behalf of the company was taken in Mexico; a considerable number of the company's witnesses were citizens of Mexico, and were, when they were examined, and, so far as they are still alive, are within the jurisdiction of the Mexican Government. These wit-

nesses and their testimony were assailed by the Mexican commissioner, Zamacona, in his opinion upon the claim, and by the Mexican agent, Avila, in his motion before the umpire for a new hearing, but not one of these witnesses was ever prosecuted by the Mexican Government for perjury, or any proceedings taken, so far as appears, in that direction, notwithstanding the timely and pertinent suggestion which was made by the umpire in his opinion denying the Mexican Government's motion to open the award.

The Mexican agent [said Sir Edward Thornton] would wish the umpire to believe that all witnesses for the claimant have perjured themselves, whilst all those for the defense are to be implicitly believed. Unless there had been *proof* of perjury, the umpire would not have been justified in refusing evidence to the witness on the one side or the other, and could only weigh the evidence on each side, and decide to the best of his judgment in whose favor it inclined. If perjury can *still* be proved by *further* evidence, the umpire apprehends that *there are courts of justice* in both countries by which *perjurers can be tried and convicted*, and he doubts whether the Government of either would insist upon the payment of claims shown to be founded upon perjury.

More will be said on this point hereafter, when we come to consider the course which was adopted by the Mexican Government, upon the adjournment of the Commission, in endeavoring to subvert the award, as disclosed by the new testimony taken by the subcommittee and printed in the appendix to the committee's report.

(6) La Abra Company was not organized or conducted as a speculation for the sale of its stock, but as a bona-fide mining enterprise. Its "promoters" took shares at par to the amount of \$157,000 in gold, costing \$235,000 in currency, and subsequently made loans to the company to pay the drafts of its superintendent in Mexico, amounting to about \$70,000 more. Not a dollar was borrowed by the company, except from its own shareholders, and not a share of stock was offered in the market by the company for sale. The company purchased the mines through Messrs. Bartholow and Garth, who transferred the titles to the company without a dollar of profit, and afterwards took stock, for which they paid par in gold, and, later on, lent the company money when its expenses proved so much larger than had been expected. (Appendix, pp. 475, 476; foot of page 105; also, p. 115.)

The usual plan of issuing shares to the vendor for the property to an amount from ten to one hundred times greater than the real purchase price, and taking back the bulk of the shares to be divided between the treasury and the "promoters" was not followed in this case. On this point the umpire said, in rendering his award:

He is also of opinion that the enterprise upon which the claimants entered, of purchasing, denouncing, and working certain mines in the State of Durango, in Mexico, was a *serious and honest business transaction on their part*, and that there was *nothing rash, deceitful or fraudulent in it*, but that it was engaged in with the *sole intention* of carrying out *legitimate mining operations*.

The Company's Claim was Supported by Depositions submitted to the Joint Commission on the part of the Mexican Government.

The undersigned now proposes to state briefly certain material facts supporting the company's claim, which were proved before the Commission by *witnesses whose depositions were taken and filed with the Joint Commission on behalf of the Mexican Government*:

(1) As to the purchase of the mines by the company; the price paid for them; the previous profitable working of the said mines by their former Mexican owners; the buildings and machinery erected by the company at Tayoltita, and their cost.

(2) The unlawful interference of local magistrates with the operations of the company; the unlawful imprisonment of the company's superintendent, Charles H. Exall; and the failure of the authorities to enforce the laws and afford the company proper and necessary protection.

As to the expenditures of the company for the mines and machinery.

D. Juan Castillo de Valle, who was examined at Durango on behalf of the Mexican Government, September 24, 1872, testified (Appendix, p. 445):

That although he does not recollect the names of all the owners, he remembers that those of Thomas F. Bartholow and David J. Garth were among the principal ones. * * * That he received as the price of the "Luz," "Rosario," "Cristo," "Ynocentes," and "Arrayan" mines, with the hacienda, for beneficiating ores, situated in the mining district of Tayoltita, called "San Nicolas," the sum of \$50,000, and that the Americans, as expressed in the interrogatory, added these mines to the Abra company or enterprise.

James Granger, a British subject, who had been book-keeper and clerk for the company at Tayoltita, four of whose depositions were taken at different times and submitted to the joint commission by the Mexican Government, testified at San Dimas, October 6, 1871, before Judge Quiroz (*ibid.*, p. 425):

That he supposes it to be true that the company has spent \$303,000 in the purchase of their mines and machinery, and in working the same. * * * That in answer to the question whether or not the mines and buildings erected by the company were likely to have cost a million dollars, he said that they probably cost \$303,000, counting all the labor expended on them, as they themselves say in their memorial.

N. A. Sloan, a citizen of the United States, a resident in the mining district of San Dimas, who had also been in the employment of the company, testified on the 9th of October, 1871, at that place, before the same judge (*ibid.*, p. 426):

That it is true that they brought with them mechanics and set up machinery * * * That in response to the question, as to whether this company spent in the purchase and working of their property the sum of \$303,000, and whether from the result of this expenditure they were taking out a million dollars annually profit, he answered that at the time he was a clerk for the company, he saw, according to the statement of the superintendent, that they had expended \$303,000, and had taken out a little less than \$6,000 in silver.

As to the products of the mines anterior to their purchase by the company.

It will be noticed that the proof of the previous profitable working of the mines afforded by witnesses who were examined on behalf of the Mexican Government does not confirm the statement, or, rather, the intimation, contained in the report of the majority of the committee that the company was deceived and imposed upon by the Mexican vendors of the property, and acquired nothing that was worth preserving. The committee say, on page 10 of the majority report:

At the mines the representatives of the syndicate were shown very rich specimens of ores, assaying as high as \$1,300 per ton, and as a result of their investigation they made a purchase on the spot of La Abra mine, paying for the same \$22,000 in stock of the company. They also bought of a Spaniard and a Mexican a number of other mines at the same place, and paid for them \$50,000 in gold. These mines were represented to be at that time producing very rich ores, and the syndicate were shown by the owners "stacks of silver, * * * some tons of pure silver," the supposed recent product of these latter mines.

Without meaning to say that the products of these mines were in no wise exaggerated by their Mexican vendors, the undersigned submits

that the following statements, *put in evidence by the Mexican Government*, show that the property purchased by the company was of substantial value for the purposes of mining. Patricio Camacho testified (Appendix, p. 413):

That he has been acquainted with the mining district of Tayoltita since his infancy; that before the mines which have been named over to him became the property of the Americans, they were owned by D. Juan Castillo de Valle and D. Ygnacio Manjarrez, to whom they were productive of *some profits*, but to what amount he does not know. * * * That the American company directed their attention to the Rosario mine *on account of what it yielded to its former owners*, Castillo and Manjarrez.

Bartolo Rodriguez, who had been in the employ of the company, testified (*ibid.*, p. 414):

That he has known the mineral of Tayoltita for fifteen years; that the owners were D. Juan Castillo and D. Ygnacio Manjarrez, who worked the mines that have been mentioned to him *with profit*, and that these afterwards sold them to the American Company. * * * That it is true that the American company gave their attention to the Rosario mine on account of knowing *the yield of silver that D. Juan Castillo was obtaining therefrom*.

Ramon Aguirre testified (*ibid.*, p. 415):

That it is more than fifteen years since he became acquainted with the mineral district of Tayoltita; and that he knows the owners of the mines that have been named over to him to have been Juan Castillo de Valle and D. Ygnacio Manjarrez, who afterward, with the hacienda and everything connected therewith, sold the same to the Americans; that said mines were *productive of profit* to said Castillo and Manjarrez, but to what extent he can not say, as he is not informed. * * * That the American company gave the most of their attention to the working of the Rosario mine *because they were aware of the amount of silver extracted therefrom by Messrs. Juan Castillo and D. Ygnacio Manjarrez*.

Aquilino Calderon, who also had been in the employ of the company, testified (p. 416):

That he has been acquainted with the mineral districts of Tayoltita for several years; that D. Juan Castillo and Ygnacio Manjarres were the owners of the mines which have been named over to him, who sold the mines and haciendas to the Americans in the year 1865; that when Messrs. Castillo and Manjarres were working the mines he was aware that they produced *good profits*.

Refugio Fonseca testified also to "good profits" (*ibid.*, p. 416), and one of the former owners, Ygnacio Manjarrez, deposed as follows (*ibid.*, p. 417):

That he has been acquainted with the mineral district of Tayoltita for fifteen years; that in the year 1854 he and his partner, D. Juan Castillo de Valle, became the owners of the first-mentioned of the mines that have been named over to him, and that *during all the time that said mines were worked by them they produced good profits up to the year 1865*; that they sold the mines and haciendas to an American company called the "Abra."

Francisco Torres, one of three witnesses brought up from Mexico by the Mexican Government, testified before the subcommittee on January 24, 1889, that he worked as a refiner for Castillo del Valle about a year before the sale of his mines to the company. On his direct examination Torres testified that the Rosario mine was full of water while he was working for del Valle—more than a year before the sale—and that all the others were in a bad condition, except La Luz, which was in operation (*ibid.*, p. 505); also that the result of his "beneficiating" was "very good," but that he could not tell what was the quantity of ore out of which this result was obtained (*ibid.*, p. 506). On his cross-examination he testified that when he was working for del Valle "he saw ore proceeding from different mines to be beneficiated in some other part of the hacienda" (*ibid.*, p. 521), and that "he thought that most of the material on which *he* worked came from Rosario" (*ibid.*, p. 524).

He also testified that the bricks of silver refined by him weighed from 6 to 10 pounds each ; that sometimes a brick was the result of one day's work and sometimes two days' work, but that he did not refine every day, and that sometimes there were intervals of three or four weeks; he came and went between his home and del Vallo's hacienda, but was more in the hacienda than at home (*ibid.*, p. 522-524). This same witness testified that La Abra mine had been "worked for the last four or five years by Don Ignacio Manjarres, who had put in \$50,000 or \$60,000, and lost all without taking out any metal at all." But it appeared subsequently that the question of profit or loss was still open—that Manjarres was tunneling La Abra mine upon an extensive plan and was not extracting ore (*ibid.*, p. 514).

The high opinion that Manjarres seems still to entertain of the value of at least one of the mines formerly belonging to the Abra Company, and the fact that during the last seven or eight years he has spent from \$50,000 to \$60,000 in tunneling that particular mine so as to reach the veins below the old workings, were brought out in the examination of Eugenio Somera, another of the three witnesses who came up from San Dimas and were examined on behalf of the Mexican Government before the subcommittee, last January, through an interpreter (*ibid.*, p. 539):

Q. Ask him when he was last in La Abra mine.—A. Last month; the time he left there.

Q. Ask him to describe the tunnel that he has testified was in progress of construction in that mine.—A. They are making a tunnel in the direction from west to east, following the vein. There are already made about 200 meters. He explains that the tunnel runs about 200 meters in that direction, and there are branches to the left and to the right of about the same length.

Q. Ask him whether all of this tunnel is on La Abra mine property.—A. All.

Q. What has been the expense of tunneling operations up to date?—A. He does not know exactly, but he thinks it not less than \$50,000 or \$60,000.

Q. Ask him whether the proprietor, if it is the proprietor that is making the tunnel, has been taking out any ore for beneficiation.—A. Not even an ounce.

The same witness testified to the experience and reputation of Ygnacio Manjarres in mining, as follows:

Q. Ask him what experience in mining Manjarres has had.

The INTERPRETER. He asks to what time you refer.

Mr. KENNEDY. I mean in his whole life.

A. He says he is a practical miner.

Q. Ask him how old Manjarres is.—A. Seventy years.

Q. Ask him if he is living now.—A. He is living, and a strong working man.

Q. Ask him if there is anybody in the San Dimas district better informed in regard to the past history and present condition of the Tayoltita mines than this man Manjarres.—A. No.

Another witness, produced by the Mexican Government and examined at the same time, named Ramon Hermosillo, testified that he knew Manjarres and thought him "a man of great experience."

Testimony of witnesses for the Mexican Government as to the unlawful interference of the local authorities with the operations of the company at the mines.

In his first deposition for the Mexican Government, taken at San Dimas, August 23, 1871, before Judge Quiroz, the aforesaid James Granger testified as follows (*ibid.*, p. 418):

Being interrogated as to whether it is public and notorious that the American company of the "Abra," as well as the other companies that have worked mines in this mineral district, have carried on their operations without having been troubled by any disturbances whatever on the part of the populace or military, and whether American

citizens are now working the Candalaria and Bolaños mines without being interrupted by any one in their labors, and without having any reason to complain of said authorities, and whether, on the contrary, if they do not have all the protection that these authorities can give them, the same as any other enterprise under Mexican management?

He answered and said: That in regard to what is contained in this interrogatory, he knows that *the principal civil authority*, D. Marcos Mora, when he occupied that position in this district, *molested the Abra Company by meddling with them in regard to the manner of working* which they had adopted, and that when D. Nicanor Perez was judge in Tayoltita, he *arrested, without having any reason, the superintendent, Mr. Exall*; that in 1866, according to a letter which he saw from the military commander, Jesus Valdespino, this person asked \$1,200 from the Abra Company, but that he does not know whether the company paid it or not.

The same witness in his second deposition for the Mexican Government testified (*ibid.*, p. 425):

That he does not know *what* acts of violence were committed against the employés of the company or against their interests; that in answer to the question as to whether he knows that the Mexicans took some lots of mules loaded with provisions, and appropriated the same to their own use, he responded that he heard it said that during the revolution between the French and Mexicans, some mules, loaded, had been lost, but that this was before the deponent came to Tayoltita.

Compare the earlier deposition of this same witness on behalf of the company in regard to the hostility, annoyances, and interferences on the part of the local authorities (*ibid.*, pp. 352-357).

Guadalupe Soto, who was local judge at Tayoltita while the company was engaged in mining at that place, was examined on behalf of the Mexican Government at San Dimas, July 24, 1872, before Judge Quiroz, and testified as follows (*ibid.*, p. 435):

Q. When you were judge in Tayoltita, in 1867, did you direct and issue the communications dated, respectively, the 5th and 4th of July, copies of which have been shown to you, and which appear on page 6 of these proceedings?—He replied that *he is certain of having issued such communications to the administrator of the "Abra" establishment*, and that he did so because there had been *a rising of the people to compel him to.* * * * On this deposition being read to him, he added that the communications which he issued were in consequence of the fact that *besides the disturbance on the part of the people*, he had received *orders to that effect from the political chief, Marcos Mora*; all in consequence of the failure of the superintendent to contract with the operatives for working the mines; he affirmed and ratified all the preceding statements.

These orders will be hereafter considered.

Testimony of witnesses for the Mexican Government as to the arrest and imprisonment of C. H. Exall, the company's superintendent at the mines.

Refugio Fonseca, examined on behalf of the Mexican Government by Judge Quiroz, at San Dimas, July 22, 1872 (*ibid.*, p. 434), testified that Exall, superintendent of the company's mines, was arrested and imprisoned for three days by Judge Nicanor Perez, and that he did not know whether the said Exall had made any application to the authorities of the State.

N. A. Sloan, whose deposition was taken before Judge Quiroz at San Dimas, in behalf of the Mexican Government, on the 9th of October, 1871, testified (*ibid.*, p. 426):

That the superintendent had been imprisoned *without knowing for what*; he said that he knew he had been *a prisoner in the jail*, and that he understood that his imprisonment was because, or, rather, according to what he saw of the affair, it was because the judge went into the hacienda to speak to one of the peons who was at work there, and the superintendent thereupon put him out, from which it resulted that the said judge immediately went to his house and ordered the superintendent to be called before him, when *he sent him to prison.*

The aforesaid James Granger, in the third of his depositions for the Mexican Government, testified to the arrest and imprisonment of the superintendent as follows (*ibid.*, pp. 434, 435):

Being asked what he knew about the imprisonment of the superintendent of the mining establishment of Tayoltita, what was his name, how long he was imprisoned, by what judge, and what was the result of *the application which the latter made to the authorities of the State*, he replied that he was *a witness to the arrest*, and that his name was Charles H. Exall; that he was imprisoned for two or three days because he reproved Judge Nicanor Perez for having removed from one room to another in the establishment of the company, and he *knew that the superintendent had complained to the governor of Durango*, but that he does not know with what result.

It will be interesting and suggestive to compare the accounts of Exall's arrest and imprisonment given by Granger in his depositions on behalf of the Mexican Government with his account of the same occurrence in his earlier deposition on behalf of the company; but before quoting from these, it may be proper to quote what is said on this subject in the majority report of the committee (p. 12):

One of the specific acts alleged to establish the charge of hostility on the part of the Mexican authorities is the imprisonment of the superintendent, Exall. In his deposition before the commission Exall states that he was arrested by the local judge; that without any form of trial or knowledge of his offense he was sentenced to two months' imprisonment, fined \$50, and thrust into prison.

In a letter which Exall wrote to the prefect at San Dimas, the official superior of the local judge, a copy of which is found in the letter-book, all the details as to the causes of the arrest are set forth. His own account as there given contradicts his deposition, and shows that his detention must have been of a *trivial character*. The evidence does not show that he was *actually imprisoned*. It was an arrest under which he was detained for *an hour or so*, and was not of sufficient consequence to be mentioned in his correspondence with the New York office, and does not appear to have interfered with his duties as superintendent.

An examination of Exall's letter to the prefect at San Dimas, written from Tayoltita, January 7, 1868 (about two months before the abandonment of the mines), shows that Exall was *still under arrest* when he made this appeal for protection. The letter was written on the same day that the arrest was made. In this letter, after detailing the circumstances minutely, Exall says:

I asked if he intended putting me in jail please to do so, as I had a headache, and wished to lie down. He then gave me permission to go to the hacienda, *but to consider myself still his prisoner*, and (to be) at his house whenever ordered. * * * *But for being a prisoner* I would come and see you in reference to the matter, but unfortunately necessity compels me to write. (Appendix, pp. 316, 317.)

It is evident that this letter was not intended to describe, and could not possibly have described, the *duration* of the imprisonment. The letter was an appeal for release from illegal detention then existing, and which had already lasted more than "an hour or so." Exall was evidently anxious, and with good reason, to find out how much longer he was likely to be kept in duress. When the isolation of that mining district is considered, and the inflammable character of the population, the circumstances attending the superintendent's arrest are worthy of the careful attention of Senators who may have to act in this case. The deed was evidently done to humiliate the superintendent publicly and to magnify the local magistrate's power. This appears from the following passage of Exall's letter, referring to the judge who had made the arrest:

He had *collected around his house a number of men*, and in the house preparations had been made as if resistance was expected and force might be required. * * * I asked him if he had gotten through with me, as I desired to return to the hacienda. He replied, yes, he had finished. Mr. Sloane and I then left and bid him good-by. As we reached the corridor he said he never wanted to see me in his house except on

official business. To this I replied, "Very well, sir," and turned to leave. He called me back, saying not to go; if I did he would *send a force after me, and they would shoot*, and insisted on my returning to the house. I did so, without any remark. He then said I was his prisoner. I then requested to know what was to be done. He said *he would put me in jail until he could receive instructions from San Dimas. I remained passive, and he then gave full license to his tongue, abusing me in the most violent language.* (Appendix, p. 316.)

The effect of such an exhibition of arbitrary power as this among such a population can readily be imagined. What happened afterwards appears from the testimony; and the first thing to be noted is that *the prefect did not interfere on Exall's behalf.* Just how long he was imprisoned seems to be a matter of some doubt. The Mexican commissioner Zamacona, in his opinion upon La Abra claim, says that "it is proved by the statements of four unimpeachable witnesses" that Superintendent Exall's imprisonment "only lasted four days." (Ex. Doc. No. 103, H. R., Forty-eighth Congress, first session, p. 40.)

What happened after his fruitless appeal to the prefect is thus related by James Granger in his deposition for the company, made at Mazatlan before the United States commercial agent May 14, 1870 (Appendix, p. 354):

In the month of December, 1867, or January, 1868, the superintendent, Charles H. Exall, was arrested and imprisoned by the "juez conciliador" of Tayoltita, Nicanor Perez, on a mere pretext, without any reasonable cause whatever. The particulars are as follows: Mr. Exall was occupied in a private room, and in private conversation, and while so engaged, said juez, or judge, Perez, entered the store at the hacienda, and without speaking or asking permission, he passed into a private store-room adjoining, and Mr. Exall observing this, stepped to the door of said store-room, and in a polite manner addressed said Perez, saying that no one was allowed to enter said store-rooms without license, and if he had any business to please communicate the same to him. Said Perez came out of said store-room in a great rage, and asked Mr. Exall if he thought he, Perez, was a thief, or wanted to steal anything. Mr. Exall denied any such idea, and stated that, in requesting him to leave the private store-room he was merely carrying out the general rules of the company.

Said Perez would listen to no explanations, and when he went out remarked that he, Exall, should hear from him. About half an hour after, an order came to the hacienda for Mr. Exall to attend, forthwith, before the said juez, or judge, Perez, which order Mr. Exall obeyed, and upon entering said court-room said Judge Perez commenced *a tirade of the most infamous personal abuse of said Exall*, without allowing explanation or justification, *sentenced said Exall to pay a fine of, I think, about fifty dollars, and imprisonment for two months.*

Exall was confined in the hacienda until the next morning, when he was sent for by said "juez," who did *lock up said Exall in an old empty house*, with the declared intention of sending him to San Dimas to complete his sentence. Said judge remarked, at the same time, that he could not permit Exall to ride even his own mule to San Dimas; that he should treat him the same as he would treat any common prisoner.

When I went to visit said Exall in his prison, the next morning, I found him busily engaged in killing fleas that were troubling him. *It was a filthy place.* By personal influences I brought to bear, and by securing the payment of the fine imposed upon him, I managed to get Mr. Exall released. *All the above I witnessed myself.*

A few weeks after this occurrence, on a Saturday, the superintendent, Exall, received from said Judge Perez an order directing him to attend at his "juez-gado" (court-room), and the same evening, at seven (7) o'clock, Mr. Exall, in obedience to said order, went to the court-room, where *he found assembled a large number of the employees of La Abra Company's mines, and others, and in their presence the said judge proceeded to lecture said Exall upon the manner in which the business of said company should be carried on, and he threatened that if the superintendent or company did not work in the mode and manner to please the authorities they should be deprived of their property, and forced to flee the country; all of which was said in my hearing, and although I have only stated a few circumstances that came under my direct observation, showing the animus of the authorities and people of this district, these are not by any means to be taken as all that took place, nor even as the most vexatious.* It was the daily, and almost hourly annoyances and interruptions. Every pretext that could, by any means, be made the basis of a suit or exaction was availed of.

Exall's own account of his arrest and imprisonment as given in his deposition on behalf of the company, before Mr. Justice Barnard of the

supreme court of New York, December 2, 1869, is as follows (*ibid.*, p. 337):

The civil officers of the legitimate Government of Mexico under President Juarez also harassed and annoyed us, and interfered with the continuing of the mining operations of said company. I was arrested by the order of the local magistrate or judge of Tayoltita, whose official title, as I understood, was "Juez," and thrust into prison and sentenced by him to a fine of fifty dollars, and imprisonment for two months. I had no trial, nor even an examination, except by him personally, and do not know for what I was arrested or imprisoned; but I here state positively that I had not committed any act, crime, or offence against the laws or people of Mexico, or any citizen or soldier of the same, nor against any of the authorities, local or national. I was released through the personal influence of a Mr. Granger, who had to promise payment of the said fine; no good reason ever having been given me for my arrest or release. *I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violence stated, but was rudely denied by both in every case, and could get neither;* and these threatened acts, and the acts of violence, were encouraged and connived at by said authorities, if not actually instigated by them, which last I believe to be the fact also. By reason of these facts it was very difficult to keep men there at work, and the prosecution of the work was greatly hindered and delayed, and it finally became utterly impossible to continue the mining operations of the company; and I was compelled, with my men, to give up the same entirely, and to abandon the mines and all the mining implements and property of the company, to save our lives.

It does not appear to the undersigned that there is any conflict whatever, as suggested in the majority report, between the letter which Exall wrote on the day he was arrested, to the prefect, at San Dimas, and the foregoing account extracted from his deposition. Nor will it be now contended by members of the committee, in view of the statement of the Mexican commissioner, Zamacona, and the testimony of Mexican witnesses, that "the evidence does not show that he (Exall) was *actually imprisoned*," or that the detention was "of a *trivial character*"—only "*an hour or so*"—and "*not of sufficient consequence* to be mentioned in his correspondence with the New York office."

If the letter-press copy-book contains all his correspondence with the New York office, Exall only wrote one letter, as superintendent, after his release from confinement at Tayoltita, and that was written to Mr. Garth on the 24th of January, 1868, at Mazatlan. There may have been a reason why Exall did not allude to his imprisonment in that letter, but the reason was not the one suggested in the majority report of the committee, if an affidavit which Exall made shortly before his death (Appendix pp. 943–945), and to which the majority report makes no allusion whatever, is to be credited. That affidavit undertakes to explain certain discrepancies between some of his later letters as superintendent and the depositions which he subsequently made in support of the company's claim before the joint commission. This *ante-mortem* affidavit of his will be further considered hereafter, in connection with his letters as they appear in the company's letter-press copy-book.

Before leaving the subject of his arrest and imprisonment, it may be well to add an account of the affair given by another eye-witness—John P. Cryder—in a deposition on behalf of the company (*ibid.*, pp. 374, 375):

I was, myself, a witness to an outrage upon the superintendent of that company, Mr. Charles H. Exall, who was, to my own knowledge, improperly and unlawfully arrested and imprisoned by the local judge, or "juez" at Tayoltita. I was present when said arrest was made, and I was also present at the hacienda of said La Abra Company when the cause or excuse was given, which appeared to me like a miserable pretext for said arrest. It was this: Said Superintendent Exall was sitting in his private room at the hacienda, in consultation with some man on private business, when the said "juez" walked into an adjoining private store room, without knocking or being invited in, and Mr. Exall remarked to said "juez" that it was his private

store room, and if he, the "juez," wished to see him on business, he, Exall, would go out and see him, or words to this effect.

These remarks were made in a pleasant and gentlemanly manner, which should have given no offense to any reasonable man, but said "juez" remarked that his dignity was insulted, or something to that effect, and that he would have satisfaction, or that he, Exall, would hear from him; and about half an hour after the occurrence named *I saw an armed guard come with the orders of said judge, or "juez,"* and arrested Superintendent Exall, and took him before the judge.

I followed him, and I heard the said local judge, Nicanor Perez, order said Superintendent Exall to be imprisoned in the hacienda that night, with a guard over him; and said judge sent for said Exall the next morning to appear before him, which he did, in charge of a guard, and the moment he entered the court-room I heard the said judge call him, Exall, *very bad names*, and he poured out upon him *the most vile epithets in the Spanish language, abusing him in the most shameful manner*; all of which Mr. Exall seemed to bear without losing his temper; and said judge, after he had exhausted the vocabulary of abusive epithets, as I thought, then turned to said Exall and announced his determination to carry out the sentence of *imprisonment for two months in the common jail at San Dimas, and fifty dollars fine*, but at the same time ordered the guard to compel said Exall to go all the way to San Dimas on foot, and not to allow him even to ride his own mule, saying the judge would learn the Gringos (as Americans are called) to treat him with deference and respect.

He then ordered said Exall to be locked up that night in Tayoltita *in an old uninhabited house that was said to have been occupied by diseased persons*. It did seem to me that nothing was too bad for said judge to say and do against said Exall. The next morning I visited said Exall, in company with an Englishman, whose name was James Granger. This Mr. Granger *not being an American but an Englishman*, had some influence with Judge Perez, although he was in the employ of the company, and he was permitted to call on the prisoner. He invited me to go with him, and I did so; we found Mr. Exall, a gentleman of refinement, busily engaged in the work of defending himself from the attacks of millions of fleas. The house where he was confined *had a most disgusting smell, and was filthy beyond description*.

It was said by the people there that *this old house had been but recently occupied by persons of loathsome diseases, and that the judge knew this fact when he sent Mr. Exall there*.

This seemed to create so much sympathy and feeling at Tayoltita in favor of Mr. Exall, even with those natives and unemployed workmen who were in favor of driving said company away from the country, that Mr. Granger managed, with some influences unknown to me, and by *securing the payment of the fine*, to get Mr. Exall released from this vile prison house; and I do not know what became of the case after that.

Taking all the testimony on this subject together—what was offered on behalf of the Mexican Government and what was offered by the company in the depositions from which the foregoing extracts have been made—it appears beyond question that the local judge publicly and unlawfully invaded the personal liberty of the company's superintendent and insulted and humbled him—made a spectacle of him—in the presence of the people who worked in the mines, as well as of those who were dissatisfied because he did not employ them, and afterwards imprisoned him for several days in a filthy hut. He did not owe his release from this pest-house to the interference of the local judge's superior, to whom he had appealed in writing, but to the efforts of one of his own subordinates, a British subject, whose relations to the "juez conciliador" of Tayoltita, Gaudalupe Soto, appear in the testimony.

It will also have been noticed that the same magistrate Perez, as stated in the foregoing extract from Granger's deposition, made another exhibition of his hostility "a few weeks afterwards" (which would be in February, 1868), and threatened "*in presence of a large number of the employés of La Abra's Company's mines*," that the company "should be deprived of their property and forced to flee the country, if the superintendent or company did not work in the mode and manner to please the authorities."

The interference of the local authorities with the company examined.

In the majority report of the committee it is held that the interference of the local authorities with the working of the company's mines was

in accordance with Mexican law and was exercised with a proper regard for the welfare of the miners. On page 12 the committee say :

The action of the local officials, Mora and Soto, is relied upon by the claimants to establish interference by the authorities in the working of the mines, and their orders to the superintendent were produced before the commission. These orders show upon their face that they were occasioned by an alleged failure of the superintendent to observe his contract with the miners, by which they were to be paid two-thirds of their wages in goods from the company's store and one-third in cash. The failure to make the cash payment led to the interference of the local magistrate, which was authorized by the Mexican mining laws.

The orders of the prefect Mora, at San Dimas, and of the local judge, Soto, at Tayoltita, are printed on page 360 of the appendix. The order issued on the 4th of July, 1867, by Judge Soto is as follows :

Second court—Conciliador, Tayoltita.

To the Superintendent of the Abra Reducing Works :

By the communication of yesterday, dated the 3d, received from the gefe politico of San Dimas, I notify you that if you do not intend to work the Abra mines as they were formerly worked, upon the system of thirds, that you *immediately vacate the mines*, to allow the operatives to work them on their own account, without further loss of time.

Liberty and reform.

Tayoltita, July 4, 1867.

GUADALUPE SOTO.

A later order issued by the prefect was in the following terms :

Gefetura Politico of San Dimas.

To the Representative of the Mines, Tayoltita :

The Gefetura, being informed that you have stopped the mines in that mineral, informs you that this is not the engagement you entered into with me, and that it hence believes that you place no value upon your word. Nevertheless, if you don't choose to continue your work, give the people permission to collect ores in the mines, as *I will not hold myself responsible for the consequences in a town where the people are without work.*

Independence and reform.

SAN DIMAS, July 10, 1867.

These orders have not been defended either by the authorities who made them, or by the Mexican Commissioner Zamacona, in his opinion against the claim of La Abra Company, upon the ground taken by the committee ; that is, that they were lawful. As already noticed, Judge Soto, in his deposition on behalf of the Mexican Government, stated that he issued his order because *he was compelled to do so by an uprising of the people*, and because of instructions he had received from his superior officer, the prefect at San Dimas. It would indeed be a strange law that would authorize a justice of the peace to say to a mining company : "You are ordered to arrange your work with the operatives *within two hours* ; and if you come to no arrangement, *you will vacate the mines.*"

Nor did the prosecuting attorney at Durango, who conducted the taking of defensive testimony for the Mexican Government, seem to regard these official orders as they have been regarded by the committee. He seems to have been afraid that they would tend "to fix the responsibility for the company's loss upon the Mexican Government," and so, in his instructions to the court of first instance at San Dimas, he said : "It is of great importance that C. Marcus Mora, who was the judicial authority of that district, and Gaudalupe Soto, who was judge at Tayoltita, be examined, in order that they may state whether they have dictated and issued the communications, a copy of which accompanies this" (*ibid.*, p. 429).

Soto was examined, with the result which has been noted. But Mora was never examined, although it is in evidence that he was accessible, doubtless because Soto's examination made it clear that the orders were issued and that further inquiry would only "make bad worse" for the Mexican Government.

The method by which the authorities could legally intervene in case of difficulties between the miners and their employers was stated to the subcommittee by Capt. Charles B. Dalghren, a witness produced on behalf of the Mexican Government, who had been superintendent of the Durango Mining Company at San Dimas from 1870 to 1875. The examination on that subject was as follows (*ibid.*, p. 683):

Q. Suppose a contract existed between a mining company and the miners, that they would pay the miners two-thirds in goods, supplies from the store, and one-third in cash, and the company attempted to pay all in goods or reduced the amount of the cash payment, would the authorities exercise the right to interfere to protect the miners?—A. In case it had been an agreement between the parties?

Q. Yes.—A. The authorities would hold you to the contract.

By Mr. LINES:

Q. In what way; what would be the form of the interference by the authorities?—A. It would be by putting in an interventor, a government official, to see, not to direct your workings of the mine, but that the legal agreement was carried out.

Q. He would supervise the distribution of the proceeds?—A. The distribution of the proceeds, but not the working of the mines.

Q. There would not be any lawsuit about it in the ordinary American sense of the term?—A. *There would be certain formalities in the court by which the judge would appoint an interventor.* That man would come down to us and present his credentials. The man would have quarters at the hacienda. He would have a right to examine the proceeds of the silver and the books, and see what your debts were, first that the men were paid, and then that the merchants were paid, and the distribution made according to the agreement between the operatives and the mine.

It appears that there never was any such intervention in this case, for the very good reason that La Abra Company never broke any of its contracts with its miners. This is shown by the testimony of another witness produced on behalf of the Mexican Government, Mr. A. B. Elder, who entered the employment of the company in the spring or early summer of 1866 and remained at Tayoltita until the fall of 1867. He was in charge of the company's reducing works when the aforesaid orders were issued. Various questions were put to Mr. Elder on this subject by the chairman of the subcommittee bearing upon some possible justification or excuse for these orders (*ibid.*, pp. 600–604).

By the CHAIRMAN:

Q. Now, Mr. Elder, I will ask you a question. Is it the custom of the Mexican civil authorities, enforced through the alcalde, to take supervision of the relation between mining companies and Mexican operatives in Mexico, so as to see that the operatives are paid what the miners or the mining companies agree to pay them?—A. Yes; they do that.

Q. That is a matter of legal administration in Mexico?—A. Yes, sir.

Q. For the purpose of preserving the miners in their rights as against their employers?—A. Yes, sir.

* * * * *

Q. Now, if you, in Mexico, desired and needed a peon or miner whom you found to be in the employment of another man or another company, I suppose your first inquiry would be how much debt he owes to his employer?—A. Yes, sir.

Q. After getting his consent to go with you in place of remaining with the other person. Then you would assume that debt, under an agreement with the former employer, you and he agreeing upon what would be a fair living to the Mexican while he was in your service, and the surplus over that living while in your service would go to the extinguishment of that debt?—A. Yes, sir.

Q. And so, if you desired to transfer that same man to another person, you would make the same arrangement?—A. Yes, sir.

Q. So that the debt always follows the man along, and is a sort of mortgage lien upon his service after his living, as agreed upon between the employers, is taken out?—A. Yes, sir.

* * * * *

By Mr. KENNEDY :

Q. Do you say that these orders that I have referred to were addressed to Mr. Exall because his miners owed anybody else money?—A. No.

Q. Did you ever examine the Mexican law on that subject?—A. I never did.

* * * * *

By the CHAIRMAN :

Q. Now, suppose the second employer, the one who takes him with a mortgage upon his labor, fails to provide for him that sort of living, is the practice in Mexico for the alcaldes to interfere and compel the second employer to live up to his contract and to provide the man with food, raiment, and whatever it is that he has agreed to furnish to the laborer?—A. I never saw an instance of that kind, where they attempted to make a man furnish it. You remember it is customary for most every mining company to keep supplies such as men use, corn, beans, rice, sugar, tobacco, calicoes, etc., which they take out every Saturday or Sunday before commencing work on Monday, for whatever they have done for the week prior.

By Mr. KENNEDY :

Q. Did you ever hear of any miner that was in the employ of La Abra Company—I mean the workmen to whom the company owed anything—failing to get supplies at the store?—A. No, sir.

Q. How far was the store from the mill?—A. About 300 feet.

* * * * *

By the CHAIRMAN :

Q. Now, before you answer this, I desire to recall your attention to another matter about which you have been speaking. Did you hear of any complaint of La Abra Company's employes in regard to their payment; whether it should be in money or in goods at the store, or in supplies?—A. At one time there was something of a jangle among the men, that the amount of cash had been reduced and a greater percentage of goods was paid. It was not anything that attracted any great attention. I paid very little attention to it, but I heard it talked of.

Q. Do you recollect whether the alcalde there interfered to look into that matter to correct it if it was presented by the operators?—A. It was referred to the alcalde, but it was talked over with the superintendent.

Q. Now, is that a subject which you understood was within the jurisdiction of the alcalde?—A. I have always understood that to be within the jurisdiction of the alcalde.

* * * * *

By Mr. KENNEDY :

Q. Mr. Elder, is not it a matter of contract between the mining superintendent and the men what proportion of their wages shall be paid in supplies and what in money?—A. Yes, sir.

Q. Now, give us your own experience in that matter, when you were a miner at La Puerta, and tell us whether you did not sometimes pay your men all money and at other times part in supplies and at other times a different proportion in supplies and money?—A. Yes, sir; that was very often the case. We sometimes paid them three-fourths money.

Q. And would it not only be when a contract that had been made between the mining superintendent and his men was violated that the justice of the peace would interfere?—A. *That was when the justice interfered; never at other times.*

It appears from the testimony that laborers had flocked to Tayoltita far in excess of the number that could be advantageously employed by that company. These unemployed workmen were a very dangerous element in that sparsely-populated region, and it appears that instead of advising them to go elsewhere, the local judge, who kept a wine-shop, in which the laborers drank and gambled, took sides with them, and insisted that the company *should employ the whole unemployed population*. Although Mr. Elder was a willing witness for the Mexican Government, he indicated the real reason for the orders in question as follows (*ibid.*, p. 565):

Q. Do you know anything of the troubles that occurred between the superintendent of La Abra mines and the authorities about July, 1867; if so, state what you know in regard to it?—A. Yes; they served a notice on the company that they wanted them *to work more men*; that they wanted them to put more work on the various mines.

This is brought out more clearly in a deposition made on behalf of the company by Matias Avalos, a Mexican who had been in its employ as a packer, and for whose honesty, truthfulness, and intelligence Capt. Charles B. Dahlgren, a witness for the Mexican Government before the subcommittee, vouched in the strongest terms. Avalos testified as follows:

At another time—I think in the month of July, 1867, when I was engaged in bringing down from the mines to the hacienda the ore belonging to La Abra Company—I met all the Barreteros, and men employed in and about the mines, going down to the hacienda, and the Barreteros and all the other men stopped and talked with me, and they all said an order had been sent up to the mines by Marcos Mora, gefe politico of that district, to stop work, and ordering them all to Tayoltita. When I came down to the town, in the evening, the gefe was at the house of Guadalupe Soto, and I heard the gefe, Marcos Mora, tell these men, a very large crowd of them, that the company did not work as he, the gefe, wanted them to work, *and employ all the men who were out of work at Tayoltita*, and that *he would not let any of them work if they did not employ all of them*, and work all their mines at the same time, as he had directed them to work; and he said at the same time, that *he was going to take the mines away from the company, and give them to all of the people, to work them as they pleased*; and that night, I remember well, I did not sleep at all, for the words used by the gefe politico to the crowd of miners were well intended, and had the effect, to incite the Mexican miners and men out of employment to riot, *and perhaps to something much worse than that*, and I expected serious trouble that night for the company. I do not know how the company settled the matter, or how it was that “La Abra Company” staid in the district as long as they did after that affair, for I knew the authorities were determined to get rid of them, from all I could hear whispered about *by Mexicans out of employment*, who seemed to be *in with the gefe and juez in getting the company out*. I know these troubles went on from time to time until the spring of the year 1868, when the superintendent, Exall, abandoned all the mines and the hacienda and metals and stamp-mill, and everything they had there, and the company has never been there or done any work in San Dimas district since that time.

Captain Dahlgren's estimate of the character of Avalos will be found in the Appendix, page 667, 711. Avalos made a second deposition on behalf of the company, in which he stated that Quiros, the judge at San Dimas, sent for him to give a deposition before him the previous summer in connection with this case, and notified him that if he did not go to court and give evidence against the Abra Mining Company he would fine him \$100 and otherwise punish him. He further stated that he went to the court, and there found a multitude of natives of the country armed, and some of them threatened him with violence because the judge told them that he had given a deposition in favor of the company and against Mexico; also that the judge wrote a deposition for him to sign, a part of which was not true, and that he supposed that that paper went as his deposition, but he did not consider it as any evidence of his in the case (*ibid.*, p. 400).

New evidence in regard to the justice of the peace at Tayoltita.

A most remarkable disclosure in regard to Guadalupe Soto, local judge at Tayoltita, was made by Colonel De Lagnel, who testified on behalf of the Mexican Government, and was the first witness examined by the subcommittee in the investigation recently closed. Colonel De Lagnel was the second superintendent of the company at the mines, and acted in that capacity at Tayoltita from the spring of 1866 to the spring or early summer of 1867. He gave the following testimony as to Guadalupe Soto, who was “juez conciliador” or justice of the peace at Tayoltita:

So far as the Mexican authorities were concerned, when I came in contact with them, they were civil, and I have no reason to recollect anything that was to be found fault with. As to some of the minor authorities, this man Soto, for instance, I must

say he was a pernicious man, I thought. But I speak with no personal feeling against him for I never did anything else but bow to him when I would meet him. He had the only good house *upon the land belonging to the company*. I never went into his house, but I understood that he sold mescal and wine to the miners and others. It was in the portico of his house that the balls took place every Saturday night when the miners would come down. They would come down on Saturday night, and Saturday night and Sunday night there would be a regular drunken saturnalia. That would begin on Sunday morning with ball and music, and the miners and women assembled, and then it would degenerate into a *saturnalia*. The blankets would be spread upon the ground and there would be gambling. The great trouble of the place was the presence of the gamblers who came to fleece these miners every pay day, and another trouble was the sale of liquor. I stopped the sale of liquor at the hacienda, and turned it over to this man Soto.

By Senator BROWN:

Q. What position did he hold?—A. When I first went there I do not know whether he was in office or not, and I am not certain that he held office during my incumbency. But he was a *potent factor*, I think, in the way of *constantly urging others and exciting bad feelings*. That was evident in the conduct of the workmen from time to time, and it was traced to him. When I say traced, I mean that I depend on what I heard from others who brought me information. I did not go into his house and held no intercourse with him except simply to bow to him and speak to him when I would meet him.

Q. His course seems to have stirred up prejudice against the company?—A. Yes, sir. *He was inimical to the company from the first. The miners were subject to his influence, and they were stirred to a demonstration at one time that I witnessed.*

Soto was afterwards justice of the peace at Tayoltita when Exall was superintendent. The "demonstration" to which Colonel De Lagnel alluded was afterwards described by him in his testimony before the subcommittee. It seems that when Colonel De Lagnel first became superintendent the laborers' wages were paid half in money and half in goods at the company's store, but subsequently on account of the reduction of the amount of ready money on hand they agreed to take two-thirds of their pay in goods and one-third in cash. This, of course, left them less for drinking and gambling, and less to spend in Soto's shop. De Lagnel was notified by Sloan that there was going to be trouble the next day when the men assembled, for they understood that the superintendent would not be able to pay them the proportion of the money he had promised them. It was a fact that, owing to the difficulty of communication with Mazatlan, where De Lagnel's drafts on the company were cashed, he was short of ready funds, but the difficulty was only temporary. He gives the following account of what happened:

The next morning when the men assembled for payment I was in the store. It was a beautiful bright day. Ordinarily they came in dressed in white, but I noticed on this day, although the day was beautiful and bright, they had their native Mexican blankets thrown over their left shoulders. That, however, did not cause any question in my mind. While I was engaged in writing the tickets, giving them their debit and credit account, with the signs that are used to express dollars and cents, and the balance due them written out so that there could be no doubt as to the balance due, the young clerk who was in attendance at the store was standing then in front of them and I was sitting back of him, said to me, "Colonel, if you are going to do anything you had better be quick about it." I asked him what he meant. He said that the fellow who was talking *was inciting these men to make an attack upon me, and he told them not to wait*. The clerk told me that the man was talking *about the Candelaria affair*, which had taken place before my time there, I believe. They had risen there and *killed some officer and sacked the place*.

What he was saying, as told me by this clerk, was, that if they only had a little pluck and unanimity among them, and *made the attack at once*, they could *clean out the whole establishment*. There was some \$15,000 or \$16,000 of property lying right around them within reach. I told him to keep quiet, and I kept them in view from the table where I was. I then started up from the seat where I was sitting, and that movement they interpreted, I suppose, as an intention on my part to go for the money, because when I made payments I would go to the room where I had the strong box and get the money. I first dispatched Sloan to the superintendent of the company above me and asked him to loan me what ready money he had on hand, so that in case

I found I could do it I could make some explanation. He brought \$125 or \$150. I then went to my room and brought down what little money I had; it did not exceed one hundred and odd dollars, and I also brought down *seven six-shooters which I had, with ammunition.*

I then called up the workmen and told them to lock up their tools and put them away, and then put on their six-shooters and come up to the old hacienda. Between that and the store where these miners were assembled was a place about 18 feet long, a court, a closed space between the buildings close by and the stone wall. I told them that I might have trouble; that I hoped not, however, but to see that everything was in order, and if they heard any disturbance to come in and shoot them down as fast as they could. These men came up, as I directed, and the Mexicans saw them come in. There was no demonstration on their part, nor did they cross the court. They staid *in the wine room* as much out of sight as possible. I called the head cleaner, Bartolo Rodriguez, who was the only man I had that I could really trust. * * * He failed me this time in point of courage. That is the only charge I have to make against him. I told him to go out and talk to these men, to tell them the situation; that I had striven to get the money; *that their own political difficulties lay in the way.* (The French must have been there at that time.) I told him to tell them that I was out of ready money, except a few dollars at the hacienda; that I was willing to pay them altogether their indebtedness in goods and let them go at once, or to pay them two-thirds in goods and give them a due-bill for the balance, or if they chose to let the whole of it stand I would settle it eventually, if they chose to settle their accounts in that way.

I also told him to tell them that I was perfectly well aware of the influences to which they were subjected; that it was the gamblers who wanted their money, and it was *the liquor dealer* who wanted to sell his liquors to them; that they were persuaded by evil-disposed persons; and that *they might feel assured that I would not put myself in their power at that distance from home without support, if I intended to do anything but the right with them.* But he was afraid to go to them, and I do not think he did anything at all.

Then one of the men came forward to try and make terms, and endeavored to assure me that these were good people; that they meant no harm; that I must not be frightened, etc. I told him I was not frightened; that my desire was to avoid difficulty; that if we misunderstood each other, I wanted to explain matters; that I would endeavor, as far as possible, to be just and honest with them; that it was my interest to do so; but that if they forced me to extremities, I would deal summarily with them.

He asked me if I had arms and ammunition. I told him I had plenty; that I had plenty of food to stand a siege and plenty of arms to defend myself with. But I said, "I tell you if I commence this work I won't leave one of you alive unless you kill us." I said, "Go back and try to explain to those men what I have told you, and tell them I mean rightly by them."

I then sat down and saw what little money I had and made the distribution. It was very small, but I made the distribution to each, anyhow, and I then called the fellow who was the ring-leader. He came up to the counter, when I called his name for payment, in a sort of surly manner, with his hat on his head. Uniformly the custom was for a man when he came for his pay to take off his hat and say Ave Maria. I do not know what they meant by it, except perhaps that it indicated respect and some deference. But this time his manner was surly and defiant. I told him to take off his hat; he removed it. Then I told him that I intended to pay him in full and that he must quit the place at once. I paid him in full and ordered him to cross the stream to the opposite bank, so as to be off the domain where I supposed I had control, and ordered him never to return under pains and penalties.

Q. Did he obey?—A. He went off, and I never saw him again. I then called up the rest of the men in turn and paid them. I told them what I had done; that I desired to do what was right and to fulfill my engagements with them so far as I could. I told them at the same time if they were not satisfied with the condition of things, as it might occur again, I wanted them to quit the place at once. None of them left me. They all staid. After that I never had any trouble (Appendix, pp. 72, 73).

It is clear from this account that if a man of less coolness and courage than Colonel De Lagnel had been in charge of the company's enterprise at that time its property might have been sacked and its American employés murdered.

Soto's connection with this "demonstration" is thus described by De Lagnel (*ibid.*, pp. 91, 92):

Q. I understood you to say that this man Soto was a pestiferous sort of man, or you used some characterizing word?—A. I considered him so. I thought he was an un-

derhand, a very quiet man. He did not show anything exteriorly, for he was always courteous when I saw him, but *I thought he was secretly undermining the whole affair.*

Q. Why did you think that?—A. I was so informed. I think it was attributed to him and others—the excitement among the workmen when the money gave out, when they came in, each man armed with a machete hidden under his blanket.

Q. Yes, I understand; but I want to understand what there was that came to your knowledge or came to you in the way of information that satisfied you that he was trying to undermine you in that business?—A. I do not say undermine. He was exerting an adverse influence. The people left to themselves seemed to be quiet, harmless people, *easily aroused and excited, particularly by a man of their own nation as opposed to a foreigner*, and I was told that *Soto was at the bottom of this affair*; that he was *inimical to the establishment* and to me being connected with it.

* * * * *

Q. Yes; and if anything of that kind came from a government official it would be very likely to excite their animosity and hostility to that company, would it not?—A. I have no doubt of that.

Q. Why did you think this came from Soto, that he was the man who was doing it?—A. Because he kept a store which conflicted to a certain degree with the store at the hacienda. They were only across the roadway, and probably not a hundred feet apart. When I went down I supposed that the domain belonging to the company would be under my control wholly. When I arrived there *I found this house up*; this man's domicile. He owned the house and I never clearly understood my relations with him, how far I dared with safety to the interests of the company interfere with him. I would rather have had him away entirely, but I hesitated to do anything to militate against the interests of the company. *I know he influenced these people, for these weekly entertainments were held in front of his house, and the liquor, the mescal, was sold in his little shop or store.*

The letter-press copy-book not a fair test.

Although he and the Abra enterprise had such a narrow escape, Colonel De Lagnel said nothing about it in his letters to the company; and, therefore, according to the doctrine laid down by the committee, nothing of importance in his testimony tending to fasten the responsibility upon Mexico for the company's abandonment of the mines is to be credited unless some account of it is found in his correspondence with the home office. This criterion of the truthfulness of the depositions of the various superintendents is thus expressed in the majority report (p. 11):

The claimant's memorial, besides charging various specific acts, contains general charges of acts of violence, persecutions, and outrages by the Mexican authorities and people, which are alleged to have so alarmed the employés of the company and to have so interfered with the working of the mines that it became necessary to abandon them. If these allegations had any foundation in fact some statements would undoubtedly be found in the letter-book and letters constituting the correspondence between the superintendent at the mines and the company's agents in New York to sustain them; on the contrary, this correspondence shows that from the very beginning of the company's operations it was specially favored by the authorities.

This idea of the committee is expressed still more emphatically and comprehensively on page 7:

In the opinion of the committee the correspondence between the company's superintendents and agents at the mines in Mexico and the managing agent of the company in New York, accompanying this report, is sufficient, considered alone, to show the whole claim of the company to be fraudulent and the *claimant's testimony* before the mixed commission, *so far as it tended to fix the responsibility for the company's loss upon the Mexican Government*, to have been *rank perjury*.

The correspondence in question (which is printed in the Appendix, pp. 236–318) occurred between General Bartholow, Colonel De Lagnel, and Mr. Exall, who were successively superintendents of the company's mines in Mexico, and Mr. Garth, who was treasurer of the company in

New York. It is undoubtedly reasonable to expect that this correspondence will show some of the difficulties experienced by the company in Mexico, growing out of the alleged failure of the Mexican authorities to protect the company's officers and property from illegal exactions and interference, and making it impossible, with any comfort or security, to conduct the business at the mines; but it does not seem reasonable to maintain that nothing tending to make the Mexican Government liable in damages to the company is to be credited, no matter how credible the witness or the statement may otherwise be, unless the fact is specifically stated in that correspondence. Colonel De Lagnel's examination affords an opportunity to test the committee's theory. He was one of the company's superintendents, whose letters from the mines at Tayoltita to the treasurer in New York appear in the letter-press copy-book which the Mexican Government has introduced as part of its "newly-discovered evidence." He did not testify for either party before the joint commission. The Mexican Government presents him now as a witness on its behalf. His credibility is unimpeached; both sides regard him as honest and truthful. Now, will the committee apply its criterion to Colonel De Lagnel's testimony, and brand it as "rank perjury" so far as it tends to fix responsibility upon the Mexican Government for the company's abandonment of its mines, because he never said anything about the "pernicious" Soto, or the armed "demonstration" of the workmen, in his correspondence with the company's agents in New York? Nor does he seem to have said anything in his letters to the home office in regard to the deep seated hatred and suspicion with which citizens of the United States and the country itself were regarded by the Mexicans—a feeling on their part the extent and intensity of which seems to have surprised him not a little. Quoting again from his examination (*ibid.*, p. 95):

One evening an old man of more than average intelligence was in, and they were speaking of the condition—that was after the expulsion of the French, the withdrawal of the French—speaking of the political condition of affairs, and a report had reached there *that a company was formed by General Butler to seize the upper States, and it created intense excitement generally among the people*, and I spoke to this man—spoke badly of course, but could make myself understood—and he said he was always glad to see Americans or any one else who came with the right motive, but the moment *he was satisfied* they came there for the purpose of seizing their government or interfering in any way he would *cut their throats*.

By Mr. WILSON:

Q. Well, there was hostility to Americans there?—A. That existed at that time, and I just mention just what I know. My own clerk, a young man who was employed in the store, a Mexican born, and raised in San Iguacio, 70 miles from the mines—he had been educated in California and spoke English as well as I could; in talking with him one evening, discussing this very thing, he just scouted the idea of the withdrawal of the French being due to the United States Government, and I tried to show him that without the United States Mexico would never have got rid of the French; but he scouted it, and speaking of what the Mexicans were capable of, and so went on to speak as if they were able to take care of themselves with any people or peoples. I said, speaking to him: "You ought not to give heed to these reports," something of the sort, "because the Americans are friendly to you. They certainly have shown it in this late action of the Government in assisting in ridding you of this foreign control, and you ought to feel kindly towards them." He said, "*We hate them.*" I said—he was only a boy—"How can you?" I said, "I was here in 1847, in the City of Mexico, and you were born about the close of the war. You are a boy now; how can you have that feeling?" "I have no feeling one way or another towards you except, because," he said, "*it was taught us by our fathers. They have told us all and they keep at it.*"

Q. Well, there was hostility and prejudice in their minds against the Americans?—A. I judge from these conversations that that sentiment was hostile, but restrained from self-interest, and as long as capital was being placed there and workmen paid, it would be well. These men, under an honest employer who exacted nothing unfair

and treated them kindly, would have gone on in their work without interruption, but, at the same time, *this state of feeling existed in the country, and it required very little effort on the part of an evil-disposed person to inflame their tempers and minds and make them hostile, and, when they became so, they would resort to desperate measures.*

Colonel De Lagnel seems never to have mentioned this fear of annexation or conquest and this ingrained hostility in his letters to New York, although, like powder in a magazine, a spark might at any moment explode it. In answer to a question put by Mr. Foster, Colonel De Lagnel gave the subcommittee another illustration of this popular excitability (*ibid.*, p. 109):

I recollect one night, the only night I ever spent in Mr. Rice's hacienda (superintendent of the Durango Mining Company at San Dimas), I recollect on that occasion the sentiment in the town was so hostile that they told me *they were expecting an attack at any moment, and were prepared to resist it.* That I remember perfectly. I slept in the hacienda that night. As I passed through the town I came—it is a peculiar place to get in; you have to wind up the side of a formation that can be barred by a dozen men; you go through a deep ravine, and then to the hacienda, so that people in the town would look down into Rice's hacienda below. These explosions only occurred, I may say, when they were possibly half full of liquor, but *that is very frequently.* That night I could hear, as I lay down to sleep, *the cries of these people, blackguarding and cursing the people in that hacienda.*

The significance of this testimony of De Lagnel's—and there is much more to the same effect in the depositions filed on behalf of the company with the joint commission—is that it establishes an antecedent probability that the causes which, as alleged, finally compelled the abandonment of the company's mines and works at Tayoltita, did in fact exist. Given such local magistrates as Soto, Perez, and Mora, such an ignorant and excitable people as the laborers that worked in the company's mines, such hatred, suspicion, and jealousy of Americans, and such a disturbed and anarchical state of society as existed in that region at that time, and it is clear that apt conditions for such treatment as the company alleges it received were present and operative. And this antecedent probability is to be considered in connection with the improbability that property of such great value as that which the company abandoned, exclusive of the mines altogether, would have been abandoned if the alleged causes of abandonment had not actually existed; for with due protection it would have cost the company but little to have kept possession of its hacienda and works, and also to have met the legal requirements for the retention of the mines.

Failure to enforce the law proved by a witness for the Mexican Government.

The inability of the local authorities to punish crime or protect property in that vicinity appeared in the testimony given before the subcommittee by another of the Mexican Government's witnesses, Mr. A. B. Elder, who, immediately prior to his employment by La Abra Company, had been mining on his own account at La Puerta, which is about 15 miles distant from Tayoltita. He testified as follows (*ibid.*, p. 569):

By Senator DOLPH:

Q. Did you work the mine after that?—A. I worked the mine not for the company but as an individual.

Q. After that?—A. Yes, sir.

Q. And it was during the time you were working on this mine that the ore was taken?—A. Yes, sir.

Q. And in consequence of the stealing of your ore you went to the justice of the peace to get him to bring suit against the parties, and he advised you that on account of the condition of affairs it was not practicable, and you quit work on the mine; is that it?—A. Yes, sir; *I quit working.*

Q. On that account?—A. *Because I could not protect myself from the men at that time.*

Q. The authority of the Mexican Government had not yet been established at the time, after the French had left that section of the country?—A. No, sir.

By Mr. KENNEDY:

Q. Now, is it or is it not the fact that during the whole of that contest the Mexican or patriot government had control of the San Dimas mining district; in other words did the French?—A. The French did get there once or twice.

Q. Now tell us just when that was.—A. Well, I could not give you that, Mr. Kennedy; that is, the date I could not fix, because they were back and forth.

Q. What I want to get at is this: The military operations did not affect your administration of the mines at La Puerta; you were outside of the limits of the active struggle, were you not?—A. Comparatively.

Q. And your difficulties came from interruptions to your supplies coming from Mazatlan?—A. Yes, sir.

The CHAIRMAN. Military interruption or interruption of robbers, or what?—A. Military.

By Mr. KENNEDY:

Q. Now, had the military situation anything to do with the powerlessness of the justice of the peace to give you justice in those complaints that you made against the men who stole your ore; was there any interference of the military with the civil authorities?—A. It was not the military.

Q. So that there was nothing in the military situation to explain the trouble you had with the miners at La Puerta?—A. No, sir.

Q. And, of course, I need not ask whether it was anything in the military situation that made the men steal the ore?—A. No, sir. (*Ibid.*, p. 604.)

Mr. Elder had previously testified as follows (*ibid.*, p. 568):

Q. What is the name of that magistrate to whom you applied?—A. I can not tell; it was so long ago I have forgotten, they often change down there; each administration has its own officials.

Q. Did you ask him to try to stop these robberies?—A. I went to him and told him that they had taken from me probably twenty-five cargass (7,500 pounds) of very fine ore, and I wanted to get an action against them to make them stop taking my ore; and he said, "The way things are at present, I don't think we can do anything with them."

Q. Did he say anything as to what would be the personal results to himself if he attempted to enforce the law?—A. He said *he didn't think it would be safe for him or me to attempt to enforce the law; to attempt to arrest the men.*

The following shows how Mr. Elder was treated himself when he was in charge of the company's mill at Tayoltita (*ibid.*, p. 597):

By Mr. KENNEDY:

Q. * * * Did you not come to my office in Washington, within a few days, and say to me, in the presence of another person there, that you knew that Mexican officers were in the habit of putting people in jail and confining them without any trial at law, and that there was one little black justice of the peace, who went barefooted, that you had known to do such things, or words to that effect?—A. My recollection—

Q. The question is whether you said that to me in my office?—A. My recollection is that he would come and I would have to stop the mill and he would take me about a mile away as interpreter. He did that a number of times.

Q. You mean by force?—A. Oh, yes.

Q. Well, how was the force exerted?—A. *Send a couple of soldiers after me with bayonets.*

Q. Did you ever make any resistance?—A. I say, "I can not go; I am running the mill; I will have to shut down." "It makes no difference; come along."

Q. How often did that happen?—A. That happened about four or five times.

Q. What did you say they wanted you to do?—A. They wanted me to act as interpreter in his court.

Q. And where had you to go to?—A. I had to go about a mile above the hacienda to an old village.

By the CHAIRMAN:

Q. What hacienda?—A. Tayoltita.

By Mr. KENNEDY:

Q. Do I understand that these occurrences that you mention now happened while you were assayer for La Abra Company at Tayoltita?—A. Yes, sir.

Seizure and Confiscation of the Company's Mule Trains.

The committee's proposition that "the correspondence between the company's superintendent and agents at the mines in Mexico and the managing agent of the company in New York, accompanying this report, is sufficient, considered alone, to show the whole claim of the company to be fraudulent, and the claimant's testimony before the Mixed Commission, *so far as it tended to fix the responsibility for the company's loss upon the Mexican Government*, to have been *rank perjury*," may also be tested by a comparison between the deposition of General Bartholow, who was the company's first superintendent at the mines, and his letters to Mr. Garth, the company's treasurer in New York. General Bartholow's testimony was taken for submission to the joint commission on behalf of the company, in June, 1874. His letters to Mr. Garth, three in number, were written between February 6, 1866, and April 10, of the same year—a period but little over two months, and it is therefore impossible that they should contain anything like a full account of the occurrences and transactions in Mexico affecting the company during his superintendency, which commenced *in the summer of 1865*. It is evident that the letter-press copy-book does not contain all of his correspondence with the home office, and can not fairly be put in comparison with his deposition, so far as the latter deals with facts that transpired prior to February 6, 1866.

General Bartholow, now deceased, attained his military rank in the war for the Union. He was distinguished and highly esteemed in Saint Louis, the senior member of a banking house in that city. The United States Commissioner, Mr. Enos Clarke, before whom General Bartholow was examined, certified that General Bartholow was well known to him "as a prominent banker and citizen of the city of Saint Louis, *a man of responsibility*, and of excellent character as a gentleman of *truth and veracity*;" and attached to the general's deposition is a certificate of the Hon. Samuel Treat, judge of the district court of the United States for the eastern district of Missouri, that, in his opinion, Thomas J. Bartholow, the aforegoing deponent, personally known to him, "is a prominent banker in the city of Saint Louis, in said district, and a gentleman of *unquestioned veracity and integrity*, whose statements are entitled to the fullest confidence."

In rebuttal of testimony, produced on behalf of the Mexican Government, to the effect that the company never owned any mule trains, and hence could have suffered no loss by the capture of its mules, General Bartholow deposed as follows (Appendix, p. 476):

Two entire mule trains, loaded with provisions and supplies belonging to said company, were captured by the military authorities of the Mexican Republic; and the mules and supplies so captured and taken by force were appropriated to the use of said army, and I never was able to recover any of said mules or supplies, nor did said Abra Company ever receive any indemnity or compensation for the same, although I applied to General Ramon Corona, the chief in command of said forces on the Pacific coast, to restore to the company the property so captured by his subordinate officers, and at the same time implored protection from him against further depredations of that character against the property of the company. He responded to said appeal by referring me to the commanding officer at San Ignacio, Sinaloa, under whose military jurisdiction the property was seized. *I visited said commander at San Ignacio*, whose name, I think, was General Guerra or General Parra; I do not now recollect which of the two was then commanding at that point. *I knew them both*, and a number of other officers of said army, whose troops had committed similar depredations, and had levied other "prestamos" upon the Abra Company while under my superintendence.

This is a sufficiently definite statement, susceptible of direct refutation if not true. The Mexican agent in Washington, as soon as this

deposition was filed, could have taken steps to examine Generals Corona, Guerra, and Parra, but the testimony of none of these officers was filed with the commission. General Bartholow deposed that *he had visited the Mexican commander at San Ignacio*, within whose military jurisdiction the alleged capture had been made, to confer with him in regard to restitution or indemnity. Such a statement might easily have been disproved if untrue. The committee brands General Bartholow's deposition on this point as "rank perjury" so far as it tends "*to fix responsibility for the company's loss upon the Mexican Government*" (there seems to be the rub), because "it appears from the letters, copies of which are found in the testimony of witnesses taken before the committee, that the company *never owned any mule trains*, but that all its transportation was conducted by hiring mule trains owned by Mexicans" (Report, p. 13). If it is General Bartholow's letters, as they appear in the letter-press copy-book, that are alluded to by the committee, the answer is that they contain nothing inconsistent with the facts stated on this point in his deposition. The capture of the mules by the military authorities in the earlier operations of the company would prove to the superintendent that it would be better to hire mules if possible. His letters show how difficult it was to do this, and how the cost of "packing" had risen on account of the frequent seizures of mule trains for the use of the army. It might well be that the packers would insist on some guaranty from the company, and, whether or not the company had any proprietary interest in the mules, or was liable to their owners to any extent in case of capture, trains of mules laden with machinery and supplies belonging to the company, and in charge of its employés, might properly be described as "the company's mule trains." What the mules carried was worth far more to the company than the mules, and even delay in receiving supplies and machinery, to say nothing of their absolute loss, would entail large additional expense upon the company and otherwise seriously embarrass the enterprise. An incident of that sort is related in Mr. Clarke's deposition (*ibid.*, p. 368).

In his letter of March 7, 1866, to Mr. Garth, in giving an account of the murder of Mr. Grove, an American employé of the company who had been in charge of one of the mule trains, General Bartholow says (*ibid.*, pp. 247, 248):

I had *nominally purchased a train of pack mules in Mr. Grove's name*, and sent him to San Ignacio to obtain a permit for them to pack for me and a guaranty that they would not be taken by the army; he succeeded in getting these documents, and was on his way home *to take possession of the mules* and start them to packing; he passed the night previous to his death at the house of one Meliton, at Tachamete. * * * Grove told this man of *his purchase of the pack train*, and that *he was to pay \$4,000 for it*, and was on his way *to take possession of it* and start it to work, thus leaving the impression that he had this sum of money with him.

This may mean that that particular train of mules was purchased by the company in Grove's name, the word "nominally" referring to the fact that Grove was merely the nominal owner, or it may mean that the purchase was nominal, *i. e.*, that there was no real transfer of the property from the Mexican owner; but this latter supposition seems inconsistent with what is said about the purchase, the price, and the possession of the pack train. Except for the question of "perjury," it would be a matter of no practical importance whether any of the mules that did the company's packing between Mazatlan or Durango and the mines belonged to the company or not; for nothing was allowed by the umpire on that account. He allowed the company what it actually expended in its Mexican enterprise, and outside of these expenditures the only allowance was for the estimated value of the ore on the patios.

But the proof that, in its earlier operations, the company did own a considerable number of the three or four hundred mules on which its packing was done, is conclusive, and is left untouched by the admitted fact that certain of the mule trains were hired, and that when he retired from the superintendency General Bartholow turned over only twelve mules to his successor.

It seems that there were two captains of mule trains in the employ of the company who were murdered on the road—one William Grove, whose body was found, and another who was “lost and never seen afterwards.” This, as well as the reputed ownership of mule trains by the company, appears from the deposition of Juan Francisco Gamboa, who testified (*ibid.*, p. 366) :

I was acquainted with the principal employés of the said company at the time they were in operation at Tayoltita during the years 1865, 1866, 1867, and up to the time the company abandoned the said mines, which I think was in the month of March, 1868. I know that *some mule trains belonging to the company* which were loaded with a large quantity of provisions and other articles, were taken, and it was said that this was done by the republican army, but I did not personally witness it. I heard it said at the time of the capture of *the mule train belonging to the said company*, which was loaded with provisions and other articles for their operatives in the said mines. As the head muleteer was lost and never seen afterwards, it was supposed that he had been killed by those who captured the mules. I also heard of the murder of Grove at a place called Arroyo del Candelero, between San Ygnacio and the company's mines in Durango ; but I know nothing personally of the facts of the murder, except from general hearsay.

General Bartholow asserts positively, in another part of his deposition, that the company owned mule trains, and he states the fact and gives the reasons as follows (*ibid.*, p. 478) :

I employed from one hundred to one hundred and sixty mechanics, miners, and laborers, including *muleteers*, during my superintendence ; they were supplied with provisions purchased and packed from the city of Durango and from the valley of Sinaloa to the company's works at Tayoltita. Other supplies, such as powder for blasting, quicksilver, fuze, mining tools, also bacon, flour, and butter, were purchased at and shipped from San Francisco, Cal., to Mazatlan, and thence by *pack mules* to the company's works aforesaid. The distance from Durango to Tayoltita was 160 miles or more, and the distance from Mazatlan to the company's works was about the same. Some of the provisions used, such as meats, lard, salt, and other small supplies, were purchased for me by my contractors in the valley of Sinaloa, of whom I now recollect José Maria Loaiza, of San Ygnacio, as one of the principal contractors for making said purchases. The average distance of said valley towns from the said company's works was about 100 miles.

In carrying on works of that magnitude it was, of course, absolutely necessary for the company to *own* and work large numbers of mules, *which it did*, as I have stated. Mule trains furnished the only possible means for the transportation of supplies.

Now, compare these statements in his deposition with the following from the first letter of his that appears in the letter-press copy-book, addressed to Mr. Garth, and dated at Tayoltita, February 6, 1866 (*ibid.*, p. 239) :

Mr. Griffith, William Grove (a new man from Saline County, Mo.), and Dr. Hardy have charge of all the pack trains. Each manages and controls a train. This is necessary, for the reason that if some American in the employ of the company is not constantly with the trains there is great danger, if not a certainty, that the animals would be taken by the military authorities ; and, besides, I could not get the Mexicans to pack for us unless I agreed to do this ; besides, with this arrangement I have a guaranty that my men, animals, and effects will not be interfered with.

Later on, in the same letter, alluding to the great excess of expenses over the estimates, General Bartholow says (*ibid.*, p. 240) :

This difference in estimate is caused principally by the weight of the mill and its cost being first so greatly underestimated, and of course all calculations based upon the weight and cost of the mill in my former estimate are not reliable ; and, besides, when I left here for San Francisco, in September (1865) mules could be contracted for

to pack at from \$8 to \$10 per carga, but *after the liberals took possession of the country and confiscated large numbers of mules* it was with the greatest difficulty that I could get any one to agree to pack at all; and had I not succeeded in getting military protection our mill would now be lying in Mazatlan. Had I at the time I agreed to remain in Mexico known that I would have to contend with *half the difficulties I have even now encountered* I never would have undertaken the task; but as I agreed to do it, my pride is enlisted in the success of the enterprise, and I will see it through if it is possible for energy and industry to succeed.

General Bartholow's revised estimate for the cost of packing was from \$16 to \$ 8 per carga, quite double the rates that prevailed before military seizures of mules became so frequent. The increased cost and difficulty of hiring mules may have induced the superintendent to purchase them. His nominal purchase of a mule train in Mr. Grove's name is mentioned in the next letter, already noticed (*ibid.*, p. 247); and in a letter written between these two to his bankers at Mazatlan, General Bartholow says (*ibid.*, p. 243):

On my way home from your city I passed one hundred and seventy-four mules loaded with my machinery, about half of which have arrived and the rest will be here to-morrow, when Dr. Hardy will start back with one hundred and fifty of them, which will be sufficient to transport all I have of machinery and goods left in Mazatlan. This is quite gratifying to me, and to pay the packers I need, in addition to what money I have on hand, at least \$2,000 more, and have drawn upon you in favor of Dr. W. B. Hardy for this sum, which draft please do me the favor to honor.

From this it clearly appears that some at least of these one hundred and seventy-four mules were hired. But these were by no means all the mules that were carrying for the company. And it will be observed that at that time, February 21, 1866, less than two months before the close of General Bartholow's superintendency, the machinery had nearly all been transported over the mountains to the mines; but outside of the transportation of the machinery there was abundance of work for mule trains, as appears by the following paragraph from General Bartholow's letter of March 7, 1866, to Mr. Garth (*ibid.*, p. 248):

As I advised you in my last, I have drawn upon you in favor of the Bank of California for \$10,000, which draft will go to San Francisco by the steamer of the 16th instant. The most of this money I expect to use in the purchase of salt and corn. Will start the *mules now engaged in packing machinery* to bringing up these supplies as soon as they arrive with the balance of the mill, which will be in a day or two. When our mill is running, we will not use less than 500 pounds of salt daily, and as none can be packed in June, July, August, and September, and perhaps October, it is absolutely necessary that enough be in store to run us during the rainy season. To keep us fully supplied with this necessary article will require during the packing season *a train of at least one hundred mules*, and *another train of an equal number* will be necessary for corn and panoca. All these matters will require constant and assiduous attention from your superintendent, for a failure to obtain an ample quantity of these supplies for the rainy season will not only involve a very heavy expense, but will greatly retard, if not absolutely stop your work. If the latter should occur, you will lose your miners, and much time will be required to obtain a new set, for *these men are so improvident that if they are without work for two weeks at a time they and their families are in danger of starvation; then mutiny and revolution is the inevitable result.*

It is confidently submitted that there is nothing in General Bartholow's letters inconsistent with what appears in his deposition in regard to the ownership and the loss of mule trains by the company. It is clear that he had expended a very large amount of money in excess of the previously estimated expenses, and it is also clear, as we have seen in Colonel De Lagnel's case, that there were things of great importance to the security and eventual success of the company's enterprise that were not reported in the letters which appear in the letter-press copy-book. Besides there is no evidence that all the letters that were written by the superintendents were copied in that book; and it has been already noticed that it contains no letters at all during the earlier and greater part of General Bartholow's superintendency.

There is a great body of testimony corroborating in a general way the deposition of Bartholow on this matter and showing that the capture of mule-trains and provisions belonging to the company and the collection of "prestamos" or forced loans from its property were matters of general repute in that part of Mexico at that time among people who were not likely to be misinformed. The testimony of two witnesses, Cole and Clarke, who were engaged as forwarders for the company in 1865, 1866, and 1867, will be found on pages 363, 364, and 369 of the appendix; Bouttier's (ib., p. 380); Avalos's, 358; and Green's, 341. J. M. Loaiza, a Mexican merchant and muleteer, who was employed by the company "in the years 1865, 1866, 1867, and the beginning of 1868," in forwarding its supplies and machinery, sometimes assisting the afore-said witness, Cole, and was familiar with its operations, after testifying to its reputed losses from seizures of its mule-trains by the Liberal forces, continued as follows (ibid., p. 378):

I know that they took, as I have stated, one of the trains which was carrying provisions for the company, and it is also supposed that they robbed it and killed the muleteer, as he has never been heard of since.

This depredation occurred while Thomas J. Bartholow was superintendent of the company, at the end of 1865, or the beginning of 1866. A short time afterward, one Grove, the muleteer of another train, employed by the company, was found brutally murdered by the people of the country, on the road to the mines where he was going, at a place called "El Arroyo del Candelero," between San Ygnacio and San Dimas, where his body was found, horribly mutilated.

Exall's depositions before the Joint Commission compared with his letters and explanatory affidavit.

The opinion of the majority of the committee that "there was no forced abandonment of the mines" is based upon an alleged conflict or want of coherence between Exall's depositions before the joint commission and his letters to Mr. Garth as they appear in the company's letter-press copy-book. This opinion is stated in the report (pp. 8 and 9) as follows:

Exall, the last superintendent, was the only witness before the commission who pretended to give the circumstances of the forced abandonment, of his own knowledge. Exall's deposition is completely overthrown by his own letters. Months before he left Tayoltita he informed the officers of the company in New York that the mines were not yielding any ores that it would pay to reduce; that he was out of funds and pressed on all sides with debts, and that unless relieved by remittances of money from New York he would be compelled on that account to abandon the property. Finally, January 24, 1868, he wrote to the treasurer in New York that unless he received money by the steamer of the next month he would be compelled to come to New York and lay the embarrassed situation of the affair before the company. It also appears that about this time Exall talked publicly concerning his intended visit to New York. The original and the press copy of the following letter to the single remaining employé at the mines has been produced before the committee:

TAYOLTITA, February 21st, 1868.

MR. JAMES GRANGER:

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co., together with its property.

You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interests of the company.

This will, to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf.

Very respectfully,

CHARLES H. EXALL,
Admr. La Abra S. M. Co.

The date fixed by Exall, in his deposition before the commission, of his expulsion from the mines was on or about March 20, 1868. An original letter of Exall's was

produced in evidence before the committee, dated at Mazatlan (the seaport, 150 miles from the mines), March 15, 1868, which shows that he had been at that place some days when the letter was written, and that he had left the property and mines in the quiet possession of Granger, his assistant; that he was on his way to San Francisco and New York to obtain money from the company to pay the overdue salary of himself and his assistant, Granger, and that he expected to return.

In his first deposition, which was made nearly two years after he left Tayoltita, Exall says that he "can not state dates and names with any degree of certainty." It does not appear that he kept a diary, and it does appear, by the letter-press copy-book and otherwise, that he left the company's books and papers at the hacienda when he abandoned the mines. Testifying from recollection, it would not be strange if he were a week out of the way in regard to the date of his departure from Tayoltita.

But it is evident that Exall's depositions, filed on behalf of the company with the joint commission, and the letters alluded to in the majority report, furnished different if not inconsistent causes for the abandonment of the mines; and the difference is so remarkable that if not explained it would justify a grave suspicion of Exall's sincerity; nevertheless, even if unexplained it could hardly overcome the great body of testimony, partly furnished by witnesses who testified on behalf of the Mexican Government to the continued interferences, annoyances, and wrongs of which the company was the victim in Mexico, and which, it is claimed, led to the abandonment of the enterprise. An explanation of the difference between his deposition and his letters was made by Exall in writing, under oath, on the 1st of May, 1878, and was received in evidence by the subcommittee on the afternoon of Wednesday, February 27, 1889, but no mention whatever is made of it in the majority report, which is likewise silent in regard to the "newly-discovered evidence" impeaching the conduct of the Mexican Government in its efforts to subvert this award.

Before considering Mr. Exall's explanatory affidavit, it ought to be observed that it was never claimed by him in his deposition, or by the company in its memorial, that he was driven out of Tayoltita by any riotous uprising (although there had been such uprisings or "demonstrations") or by any open attack upon the hacienda, or any one public act of violence, either on the part of the authorities or people. But it was claimed both by him and the company that by a persistent and long-continued course of illegal interferences and impositions, accompanied by acts of violence, with the connivance of the local magistrates, and the refusal of the higher authorities to afford protection or redress, it was made impossible for the company to conduct its business or retain possession of its property at Tayoltita.

In his first deposition, after giving an account of his arbitrary arrest and imprisonment, in regard to which the evidence has already been collated in this report, Exall refers as follows to the situation after the French army had retired from Mexico and the liberal party had come into power (Appendix, p. 337):

Indeed it was even worse in the mines, for then they seemed to turn their whole attention to what they called a purpose on our part to annex Durango to the United States. And it was in vain that we protested that we had no such intention.

The report had become general, and we were so harassed that it was impossible to continue our work with safety, as I have before stated.

It will be remembered that Colonel De Lagnel, in his testimony before the subcommittee on behalf of the Mexican Government, testified to the excitement produced at the mines and throughout the district by the story of General Butler's alleged designs upon the State of Durango.

Recurring to the company's experience before the withdrawal of the French troops, Exall says (*ibid.*, pp. 337, 338):

The military under Maximilian frequently captured our mules and stores in the same way, and shamefully abused our men who were conducting the trains. They assigned as a reason for so doing that we, the said company and its employés, were republicans, and hostile to the interests of their so-called imperial government, which was true. And so, between the two fires, we had no protection, neither of the contending parties respecting our rights under the law, but both of them robbing us. Large quantities of silver ore was taken or stolen from our mines after we had taken it out, and such were the threats against us that we did not dare to go out and defend it, as we would have been in great danger of losing our lives by so doing. The ores so taken were of the very richest.

Further on he says (*ibid.*, pp. 459, 460):

Said Judge Guadalupe Soto, and the prefect, Marcos Mora, encouraged this spirit among the men and incited them to riot by telling them, falsely, that the company came there to annex Durango and Sinaloa to the United States, and they ordered all the men whom I did employ to quit work, which nearly all of them did do frequently for weeks at a time, paralyzing the works and the business of the company, so that I sometimes had but few men at work, and the men who did work had to so manage the same as to deceive the prefect, or keep the fact from his knowledge that they were still working for the company; and on one occasion Aquilino Calderon attempted, notwithstanding this order, to work at the mine "El Cristo," but thereupon he was by force of arms compelled by said judge and prefect to quit the company's service, and they, the said prefect, Mora, and Judge Soto, infused the same hostile feeling into the whole mass of workmen, and said Mora and Soto issued the written communications or orders to me, which are referred to in said defensive testimony, requiring me to employ all the men and work the mines as Soto and Mora directed, or to abandon them to the people to be worked by themselves as they pleased; but those written orders were mild compared with verbal orders given me by said officials from time to time, and finally the last order or warning by the prefect, Olvera, notifying me to abandon the works and leave the country, which forced the abandonment of the company's works and mines.

It was but a foregone conclusion with said authorities, as from their words and actions I felt, weeks before that time, that the abandonment was inevitable. The local authorities and other politicians urged the workmen to hostile demonstrations, and at one time they charged upon the hacienda and broke in the doors. This state of hostile feeling continued, and said turbulent characters continued to harass the company in its operations, and when, soon afterwards, Macario Olvera, Soto's son-in-law, became prefect, matters grew rapidly worse, so much so that only a few nights before I escaped, an attack was made upon the hacienda of the company by some men headed by said prefect Olvera himself, as I was informed the next day by one of the friendly Mexican workmen, a muleteer. They were armed with pistols and machetes, but as I had been previously warned of it by said friendly muleteer, I was in some measure prepared for the attack, and after they discovered my position and strength they retired for that night.

Soto and Olvera both told me that unless I employed all the men who were out of work in that district, which they knew was utterly impossible, that they would let the working people drive the company out of that district and give them the mines to work as they pleased. Their verbal orders to me were much more pointed, emphatic, and hostile, than anything they wrote me. They were working openly and covertly to get us out, and to escape as much of the responsibility as possible for so doing.

Now, it is claimed by the committee, in the majority report, that although this testimony (and there is much more of it, giving the details of other annoyances and injuries) is confirmed by numerous witnesses, some of whose depositions were taken and filed by the Mexican Government, nevertheless it is not to be credited, because certain letters written by Exall to Garth show that Exall was short of money, and could not carry on the company's works without remittances from New York, which the treasurer refused to send. It will hardly be denied that two causes for abandoning the company's business might co-exist and co-operate, each one of which might be conclusive. The business might be abandoned because it was unprofitable—that is, because the ores could not be reduced at a profit—or the business might be abandoned because of such illegal interferences and want of proper protec-

tion as the umpire found from all the evidence to have been proved in this case. The financial straits of the company would be no excuse for such wrongs, nor an available defense for the Mexican Government, except perhaps in mitigation of damages.

And the fact that the company abandoned its valuable improvements, as well as its mines, supports the theory that the abandonment was caused by a conviction on the part of the company that it could neither conduct its business nor hold its property in Mexico on account of the alleged interferences and want of protection. Furthermore, the evidence seems to warrant the belief that the company in New York could have readily obtained all the capital that might have been needed, if its directors could have given any assurance that property was safe and the laws reasonably well enforced at the mines.

In answer to a question why he and the company did nothing further after the abandonment, Exall answered (*ibid.*, p. 338):

Because I did not dare to return and resume mining operations there. I was, and am satisfied that I could not do so with safety to the life of myself or my workmen, or with safety to the property of said company, such was the hostile feeling or prejudice against said company, as citizens of the United States, and further prosecution by said company of mining operations there, both on the part of the citizens and the local and national authorities of the Mexican Republic, and the violent acts resulting from that feeling and prejudice, being encouraged and connived at by said authorities as I have stated. And I returned to the State of New York, and *advised said company that it was useless to attempt any further working of said mines, and gave them the facts above stated as my reason for that advice; and I understand that said company was so advised by others, who were citizens of Mexico.*

Recurring now to Exall's explanation of the difference between his depositions and his letters, it appears from the testimony of Mr. Ely, who was examined by the subcommittee in the afternoon of February 27, that while on a visit to Washington he had seen certain copies of letters alleged to have been written by Exall as printed in a pamphlet or petition which had been prepared by General James E. Slaughter in the interest of the Mexican Government, and was in circulation among members of Congress in the spring of 1878, and that when he (Ely) returned to New York, he made search for the company's correspondence, and not being able to find it, he sought an interview with Exall, and asked him whether he had ever written such letters as those that had been published by General Slaughter, and, if so, whether the facts therein stated were true. The following extract from Mr. Ely's examination by the chairman of the subcommittee shows what passed between Mr. Ely and Mr. Exall before the explanatory affidavit was made (*ibid.*, pp. 949, 950):

Q. Well, what I wish is a statement of your best recollection of all you said to Exall in respect to those letters—the whole of it. Just go right through now and state it in your own way.—A. I stated to him that there appeared to be certain letters from him written to Mr. Garth as treasurer of the company, and that those letters contained statements in them that the ores at the mines in Mexico were of little value; that there had been no trouble down there with the authorities; that he had been embarrassed for want of funds—well, I can not give you it in much more specific form than that. The general upshot of it was that the company was without valuable property down there, and that his letters tended to show it; and that they were without means down there, and that his letters tended to show that; and that there was no difficulty with the people about titles or anything else of that kind, or any abandonment; that he had written to Mr. Garth that if he did not intend to let the property go to the dogs down there he must send some money. I can not remember all I said, nor give you now anything nearer to it than that; that I certainly said to him the statements in those letters, if those letters were written by him and the statements were true, conflicted with the statements that he made in his depositions for the company, and that if those were his letters, and the statements were true, I wanted to know it; and that if they were not true I wanted him to tell me what his explanation of them was, if they were his letters. That is

as near as I can now tell you, Mr. Senator, about this. I have no doubt that I gave him something more, particularly of the expressions in the letters, but I conveyed to him the impression as strongly as I could that those letters, in my opinion, went counter to his affidavits, and I wanted to know what the truth was about them.

Q. I suppose that, as a lawyer, you selected out the points that you thought were the most essential for him to reply to?—A. Well, it showed most conclusively that his depositions would not be true if the letters were true.

Q. And you stated to him what these points were, in the language of the letters, as you saw them in Slaughter's petition?—A. No, I did not use the language of the letters, except that I jotted down a few expressions that struck me as peculiar.

Q. Well, can you recall any of those expressions?—A. One was about its "going to the dogs;" did not want the property to "go to the dogs" struck me as a peculiar expression and made an impression upon my mind; and send him some money; wanted to know the intentions of the company in regard to it, and another thing is there is no difficulty about titles or anything else; it was only money.

Q. Did you inform Exall that his letters, if genuine, contradicted his deposition given before the Commission?—A. I suppose I did that, yes; in this way: I told him if these letters were genuine, or if the statements in them were true, that then they conflicted with his depositions.

Exall's explanatory affidavit is printed on pages 943–945 of the Appendix. It shows that shortly after he arrived at Tayoltita he came to the conclusion that it would be impossible, on account of the state of the country and the hostility of the local authorities, for the company to retain possession of its property and carry on its business of mining; and that he entered into a scheme or plot with James Granger which is stated as follows (*ibid.*, p. 943):

We saw that if the company was actually expelled, as we were certain it ultimately would be, we might not, and most probably would not be able to secure the property, as it would probably fall into other hands; but if the company could be induced voluntarily to abandon the property before matters culminated in an expulsion, or to part with it for a small consideration, we could probably retain the possession and secure the property to ourselves and due protection (*Mr. Granger being an English subject*).

The company was already somewhat disappointed because more rapid progress had not been made at the works and in reaching money results, and somewhat dissatisfied with being drawn on by the superintendent for more money. *We thought that the state of affairs at the works could, from time to time, be so presented to the company as to induce the feeling we desired, and concluded to act accordingly.* * * * In my letters to Mr. Garth, treasurer of the company, written from time to time, *I purposely dwelt upon and exaggerated the necessities and the exigencies of the situation, and belittled the value of the mines and ores*, and gave to the letters a discouraging aspect. I also wrote to him about my arrest and the threats made to me, and the difficulties and obstructions generally which I met with from the Mexican authorities and people.

It has already been observed that the letter-press copy-book contains copies of letters in regard to the need of money, and the impossibility of continuing the company's operations without it, but no copy of any letter, except the one addressed to the prefect, in regard to the "arrest" and the "threats," or (later than July 13, 1867) in regard to "the difficulties and obstructions from the Mexican authorities and people" referred to by Exall in this affidavit. Perhaps he did not copy his letters to the home office on these subjects. Be this as it may, they do not appear in the letter-press copy-book, the incomplete character of which has already been noticed. Superintendent Bartholow's earlier letters are all missing. One of these he alludes to in his letter of February 6, 1867, as having been written about the first of the previous month. He also alludes in his letter of March 7, 1867, to his "last"—an earlier letter which does not appear in the copy-book—in which he says, he informed Mr. Garth that William Grove was missing, and that it was feared he had been waylaid and murdered. Nor are the dates in the copy-book consecutive (*ibid.*, pp. 313–317).

Exall denies in his explanatory affidavit that he ever delivered the letter of February 21, 1868, to Granger, turning over to him the care of

the property, and explains how that letter came to be written (*ibid.*, p. 944):

Mr. Garth wrote such answers to my letters as I assumed they would call forth, and from the answers it seemed evident that the company would not be unwilling to enter into some arrangement to part with their property; and in the latter part of February, 1868, I concluded to go on to New York and see what could be done to that end.

Preparatory to so going I drew a paper addressed to James Granger, which purported to invest him with my authority and to give him power to act for the company. I had no power to confer, being only an acting superintendent, nor authority to confer such power if I had any; but *it was necessary for the purposes we had in view that he be in possession*, and that he should *seem to Mexicans to have the proper authority*. Had I gone then, I intended to return. But I reconsidered my decision to go at that time, and concluded I ought to remain longer before going, and await still more alarming indications from the people and authorities, and *the paper I have referred to was never delivered to Granger*. Whether I destroyed it or left it among the loose and discarded papers at the hacienda of the company I do not remember.

He then continues as follows:

I remained there some time afterwards, but I waited too long, and the explosion which I believed to be several months distant came unexpectedly, and the expulsion of the company, and my abrupt departure to save myself from personal harm, and the complete abandonment of everything belonging to the company took place *as I have stated in my deposition*.

He adds that he still hoped that Granger, instead of some Mexican, would get the possession of the property, but that he was afterwards informed that Judge Soto, the father of Granger's wife or mistress, took possession of and occupied the company's hacienda. He then says:

I returned to New York and informed the company of its expulsion and of my forced abandonment of all its property, and gave them a full history of the state of their affairs and of the feeling in Mexico against them. The company seemed to think the case was hopeless.

The affidavit closes as follows:

I speak of my letters from general recollection of them only, but the foregoing is a correct history of the origin and purpose of all letters I have ever written which contain anything inconsistent with my depositions. They were written for the express purpose of enabling Granger and myself to obtain the possession of the company's works and mines in the contingency which I have mentioned, and were known to and largely prompted by Granger, and in fact partly drafted by him, and in so far as they conflict with my depositions *the letters are untrue, and every material statement in my depositions is true*.

The question arises whether there is anything in the evidence, outside of this sworn statement, to show that Exall really exaggerated the financial difficulties at the mines and belittled the value of the ores in those letters of his to Garth. It does appear that Exall received no remittances from the company during the whole term of his superintendency, which lasted from April, 1867, to March, 1868; and that the only draft he ever undertook to draw upon the company—the one for \$3,000 mentioned in his letter of July 13, 1867, to Mr. Garth—was not negotiated (*ibid.*, pp. 307, 309). It also appears that on the 1st of July, 1867—eight months before the abandonment—he had a cash balance of \$1,733.58 on hand at Tayoltita, and that the company at that time owed its American employes \$1,070.46; C. Sandoval, for charcoal, \$46.59, and Echenique, Pena & Co., at Mazatlan, for money borrowed and merchandise, \$2,094.70, making a total indebtedness of \$3,211.75, and leaving a deficit of \$1,478.17. (*Ibid.*, p. 306.)

From this time till the abandonment Exall paid all the running expenses of the mines and the works and the hacienda out of the returns from the mill. He also settled with Cullins, to whom the company owed \$1,492, but he says in his letter of December 18, 1867, that he

borrowed that amount (*ibid.*, p. 313). If he did, he subsequently repaid it, for he left no debts unpaid at the mines or in Mazatlan, except arrears of salary due to Granger and \$250 borrowed from Pena & Co. A. B. Elder testified that he and other employes of the company were paid in full when Exall returned from one of his trips to Durango (*ibid.*, p. 582). Mexican witnesses accuse him of squandering the products of the mill in gambling (*ibid.*, p. 521), and seem to intimate that bullion was "disposed of" improperly by Exall and Elder (*ibid.*, p. 417). This may refer to the fact stated in Exall's affidavit that he shipped bullion clandestinely to New York and San Francisco instead of sending it to the mint at Durango (*ibid.*, p. 944). The statement in his second deposition that he extracted \$17,000 worth of silver from 20 tons of ore (*ibid.*, p. 462), which has seemed so incredible to the Mexican Government and the majority of the committee, receives considerable color of probability from General Bartholow's letter to Mr. Garth, of March 7, 1866, in which the general makes the following statement (*ibid.*, p. 246):

From "La Luz" we have taken out 400 tons, and the quantity mined weekly has been increased to an average of 30 tons, and at the same time we have succeeded in reducing the cost delivered on the patio to \$15 per ton. In this mine we have found a small vein, an offshoot from the main vein, which is now about six inches wide, which is producing with two hands (no more can be worked in it) from *three to four hundred pounds per week of ore of surprising richness*. If the opinion of the Mexicans, including Don Ignacio Manjarres, is worth anything, these say *it will yield \$1 to the pound*. I think this is an overestimate but I would not be surprised if it should assay \$1,000 to the ton. I have put up about two pounds of it, which I will send with this letter by Wells, Fargo & Co.'s Express. On its receipt I would be glad if you would have it assayed and report the result. *This ore we put up as fast as mined in gunny sacks and store it in the wareroom.*

Another rich "find" was made under Colonel De Lagnel's superintendency, to which he alludes in his testimony before the subcommittee, as follows (*ibid.*, p. 54):

I remember the wild excitement among the miners, because when the ore was brought down you could see the gold in streaks as large as a big diaper-pin head, little pellets of gold along like fine shot so as to leave a line of gold.

Senator BROWN. That then was very rich gold ore?

The WITNESS. I took it for granted that that was rich ore. All the miners seemed to be in a state of excitement. They found it out by sinking a shaft, I think for ventilation, or for the easy dropping of the ore, or some such purpose as that, from the upper level, I forget just what, and in that way they found this valuable ore.

Mr. Elder testified that he made assays of ore at La Puerta for Colonel De Lagnel, previous to June, 1866. It may have been some of this ore that gave the following satisfactory results (*ibid.*, p. 569):

Q. Just tell us what assays you made for him before you went to Tayoltita.—A. He came to my place with some ores and asked me to make assays for him. I did so, and I got very fine results, about \$250, and as much as \$600, that day from those ores.

If these rich "finds" were all stored in the warehouse in gunny sacks, or kept, as ordinary prudence would require, in some safe place by themselves, there must have been a lot of high-grade ore on hand, and it was probably from this that Exall got such results after the mill was running, and after De Lagnel had left Tayoltita; for there was only one "run" of the mill while De Lagnel was superintendent, and that was made just before his departure for New York, from 10 tons taken promiscuously from the large piles on the patio (*ibid.*, pp. 36, 37).

It also appears that Exall must have incurred legal expenses to a considerable amount, for he employed one of the most distinguished lawyers in Mexico, Mr. Jesus Chavarria, to appeal, on several occasions, to the State government, on behalf of the company, for the protection and

redress which had been denied by the local authorities (*ibid.*, top of page 389).

It therefore seems clear from the evidence, outside of Exall's explanatory affidavit, that he did exaggerate his financial difficulties and belittle his resources in the letters which he wrote to Mr. Garth after July, 1867. He seems also to have invented dangers which did not exist, for we find him saying to Mr. Garth on the 6th of October, 1867, that "amparas are not now granted, and mines are to be held only by working;" and yet, eight days later, he applied to the president of the mining deputation of the district of San Ygnacia (apparently with success) for an amparo for six months on the mines Arrayan, Sauz, and Talpa (*ibid.*, pp. 310, 312).

Shortly after this, on November 8, 1867, Granger writes to Garth that Exall had left Tayoltita on the 26th ultimo with bullion for Durango, in company with Mr. Sloan and two mozos, and that it was reported that the party had been met by a band of robbers and that everything was taken from them (silver, mules, arms, etc.), leaving them in their underclothing to make their way into the city, about half a day's journey (*ibid.*, p. 312); and on the 18th of December Exall writes to Garth "for God's sake" to telegraph to the Bank of California and pay De Lagnel's draft, so as to stop the threatened suit (*ibid.*, p. 313), although, two months previously he had explained to Mr. Garth that "there was a flaw in the draft," De Lagnel having failed to sign as superintendent, thus "making it an individual affair" and preventing a seizure of the company's property (*ibid.*, p. 310). In his last letter to the company's treasurer, which appears in the letter-press copy-book, dated at Mazatlan, January 24, 1868, Exall raises this same alarm again, and says that he has been doing everything in his power "to keep the Bank of California from getting possession;" that he has thus far succeeded, but "can prevent them no longer," and fears that "they will eventually have their own way."

Meanwhile his difficulties with the local authorities were increasing and their aggressions growing more intolerable. Judge Soto had denounced the lower hacienda and had taken possession of it and set men to work on it, although the company had intervened by Exall to protect its property, and no decision had been rendered by the courts. Exall's letters to the prefect at San Dimas show that he had appealed to Judge Perez at Tayoltita against Judge Soto's illegal action, and although Perez decided that Soto must suspend work, Soto continued his operations, and Exall afterwards learned that Perez had told Soto privately to go on with his work, "which he did," and thereafter "continued working." The two local magistrates seem to have combined to break the law and seize a part of the company's property. It also appears from the same letter (*ibid.*, p. 314) that Soto claimed that he was working by authority of an order from the prefect at San Dimas—the same official before whom Exall's appeal was pending and to whom the letter in question was addressed. In a letter written the same day to Castillo de Valle, December 5, 1867 (*ibid.*, p. 315), begging his good offices in this matter, Exall expresses his fear that the local authorities had committed themselves to Soto, and shows what a serious injury Soto's proceedings were and would be to the company.

It matters little that when the case was carried to the state courts of Durango the decision was eventually against Soto. The company was virtually in the power of the local authorities at Tayoltita and San Dimas, and all their arbitrary and illegal acts were known to the populace and were productive of hostility and opposition to the com-

pany and contempt for the law. Following this trouble with Soto came the arrest and imprisonment of Exall by Soto's associate, Judge Perez, under the circumstances already described, and this was afterwards followed by a judicial "demonstration" against Exall, in presence of the workmen, at which he and the company were threatened with expulsion from the mines. These judicial assaults seem to have culminated in a warning given by Olvera, the prefect at San Dimas, to Exall in person, that his life was not safe at Tayoltita, and that if he consulted his safety he would abandon the mines. (*Ibid.*, pp. 460-462.)

The company's case does not depend on Exall's depositions.

Having considered the evidence tending to show that Exall did really exaggerate the company's financial difficulties at Tayoltita in his letters which appear in the letter-press copy-book, as stated in his explanatory affidavit, it now remains to inquire whether there is evidence, in addition to what has been already quoted or referred to, showing that the causes to which he ascribed his abandonment of the mines and the works of the company at Tayoltita, in his depositions before the joint commission, did really exist. It will be noticed that his explanatory affidavit closes with the statement that in so far as they conflict with his depositions the letters are untrue, and every material statement in his depositions is true. The grounds for the abandonment of the mines, as stated in Exall's depositions, have already been noticed in this report. It is now proposed briefly to collate the evidence which was before the umpire on this branch of the case, and has not been hereinbefore noticed.

The Mexican prefect, Mora, who was examined on behalf of the company, being questioned as to his predecessor, Quiros, and his successor, Olvera, and particularly as to their disposition towards La Abra Company, answered (*ibid.*, p. 393):

That neither of them were satisfied with the laws given by President Juarez, inviting foreigners to come to the country, and although those persons might have obeyed them it was against their own wishes; that *they not only showed their unwillingness to do so, but in various ways tried to molest them and force them to leave the place.*

As to the company's fruitless appeals to the State authorities for protection, the same witness testified (*ibid.*, p. 395):

That lawyer Chavarria informed him that the Abra Mining Company, at the time referred to in the question, employed him and Mr. Rice, the former as lawyer and the latter as attorney in fact of the company, to make a complaint to the governor, General Francisco Ortez de Sarate, *of the damages and persecution which the company were experiencing at San Dimas*, and asking him for protection; that at the time the governor sent for deponent, and questioned him with regard to the company; that the deponent informed him *that it consisted of Americans, and, like all other foreigners, was working for the ruin of Mexico; he refused it the protection which it prayed for.*

In regard to the stealing of the company's ores and the failure of the local judges to protect the company from these depredations, Mora testified (*ibid.*, p. 394):

That during the time of his administration he had no knowledge of the theft of the ores referred to in this question, but he did hear it stated that during Olvera's time the Mexican operatives, who were absolutely without work to maintain themselves, *stole some of the company's ores, and that neither Quiros nor Olvera would listen to any complaints, made on account of the said robberies, by the company's superintendent.*

Avalos, when he was examined on behalf of the Mexican Government, subsequent to his deposition for the company, testified that it was true that the company had been prevented by the people from working. Extracts from his testimony on behalf of the company have already been given.

In his first deposition for the company James Granger testified as follows (*ibid.*, p. 356):

Question number thirteen. Were any of the authorities, local or national, civil or military, in the mining regions of Mexico in favor of extending protection or security to American companies engaged in working said mines?—A. No, sir; they are bitterly opposed to it; as I have before said, they are all in favor of seeing the mines of Mexico in the hands of and worked by Mexicans. I have heard the two prefects of San Dimas, that I have named, Marcos Mora and Macario Olvera, say so while they were officiating as prefects there, and I have often heard Judge Guadalupe Soto, of Tayoltita, say so. The last-named authority I have heard say much more on the subject, as applied to "La Abra Silver Mining Company." * * * *That he would go for clearing them out if they attempted to return to work their said mines at Tayoltita.* I know that this was and is now the feeling there with higher Mexican authorities than Guadalupe Soto in that district.

The same witness testified (*ibid.*, p. 357) that at that time, May 14, 1870, the principal hacienda and buildings of said La Abra Company at Tayoltita were occupied by the said Guadalupe Soto and his family, and that his office was then "gefe de Cuartel." Granger said that he had been at Tayoltita himself "but a few days ago." Avalos also testified in May, 1870 (*ibid.*, p. 358), that the company's hacienda and property at Tayoltita were occupied at that time by Judge Soto and his family.

Alfred A. Green, who, since the award in favor of La Abra Company was rendered, has been employed by General Slaughter under his contract with the Mexican Government to obtain testimony impeaching the award, testified in New York on behalf of the company in December, 1869. In that deposition, he says (*ibid.*, p. 241):

I know the mines called "La Abra," in the State of Durango. It is situated at Tayoltita in the same district of San Dimas. I also know "La Abra Silver Mining Company," the company that owned and worked said mines "La Abra." * * * In January, February, and March, 1868, I was frequently at said mine "La Abra." * * * In January, 1868, at San Dimas, I heard some Mexican citizens, in the presence of the "juez" of that place, declare that *they would kill or drive away all the men of that company, and the threat was applauded by the "juez."*

The same witness testified in regard to the stealing of ores, and the feeling of general hostility on the part of the authorities and people as follows (*ibid.*, p. 342):

After the expulsion of said "La Abra Company," which I have mentioned, in March, 1868, *Mexicans were engaged in carrying off its ores*, and it would have been impossible for the company to have returned and continued its mining operations. Any persistent attempt to do so, I am sure, would have only resulted in *the killing of the superintendent and his officers.*

My long residence in Mexico, and my ability to converse in the Spanish language, and the interest which I had taken in the liberal cause, and services I had rendered it, which were well known in the State of Durango, enabled me to mingle freely with the inhabitants, and for a long time, and until a short time before I was driven away from San Dimas, I was regarded by most of the Mexicans more as one of them than as a foreigner, and matters were talked of by the citizens before me as freely as if I had been a native-born Mexican, and I know well the state of feeling of the citizens of the State of Durango, and the Mexican authorities, civil and military, against foreigners in general, and citizens of the United States of America (or Americans as they were called) in particular, at and subsequent to the commission of the acts against said "La Abra Silver Mining Company," which I have mentioned. It was very bitter, and ended in open hostility and violence. The report was industriously circulated that the object of the Americans, and especially "La Abra Company," was to annex Durango, Sinaloa, and other border States to the United States of America. Such, I know, were not the views or aims of Mr. Exall nor of other Americans in charge of neighboring mines, whom I knew. The report was circulated to inflame the more ignorant classes. The real object, it was evident, was to get possession of the mines and property of the American companies and the benefit of their expenditures.

On several occasions, in January, February, and March, 1868, in San Dimas district, I have heard Mexican citizens and authorities say that they meant to drive off and kill out all the Americans, and get their mines and property.

This feeling of hatred and hostility was shared by the military authorities and soldiery, and by the local civil authorities, and was encouraged by them. It grew in intensity and boldness until it culminated in open violence and forcible dispossession of "La Abra" and other companies. Several other American companies, besides La Abra, were driven off in a similar way. *Any attempt to obtain restitution or protection from the authorities was vain, and only increased the personal danger.* * * * *

From my knowledge of the feelings of the citizens and authorities in San Dimas and the situation of affairs there, and from my own case, I am confident that after the acts against said "La Abra Company" any effort on the part of said Exall, or of anyone else for the said company, to continue mining operations would have resulted in his or their death by violence.

It appears in the "new evidence" offered by Mexico (Ex. Doc., No. 103, p. 287) that, while the joint commission was in session, the Mexican Government obtained (or now alleges that it obtained) a deposition of William R. Gorham, in March 1872, stating that the deposition of the aforesaid Alfred A. Green, from which the foregoing extracts are taken, "was not read to said Green or signed by him." Now, although Gorham's deposition was not submitted to the joint commission, nor any evidence tending to impeach the authenticity of Green's deposition, Gorham's deposition has, nevertheless, been printed by Congress as part of Mexico's "new evidence." Nor has the Mexican Government availed itself of the opportunity afforded by the Senate to produce Green before the subcommittee and examine him in regard to his deposition or the matters of which it treats. He is still living, and, as has been stated, *has been in the employment of the Mexican Government*, under General Slaughter, endeavoring to collect evidence in Mexico to impeach this award. His conduct in that employment will be noticed hereafter in connection with the recent testimony given before the subcommittee on behalf of the Mexican Government by Capt. Charles B. Dahlgren, who also had made a deposition, in favor of the company, which was filed with the joint commission. Perhaps the reason why Gorham's affidavit, stating that Green had never signed his deposition, was not submitted to the joint commission, was the fact that an affidavit of the same Gorham was attached to Green's deposition, certifying that *Green had made it*, and that it was "entitled to full faith and credit" (*ibid.*, p. 344). Gorham's affidavit would not do for the joint commission, but it has been available, with other false and defamatory matter of the same sort, as will be shown hereafter, to swell the volume of the so-called "newly-discovered evidence" presented by the Mexican Government to the State Department and Congress for the purpose of subverting this award.

Recurring again to the testimony corroborating the company's memorial and Exall's depositions, attention is invited to the deposition of Carlos F. Galan, which was taken in January, 1874, in support of the claim of James Tobin *vs.* The Republic of Mexico, and submitted also in this case. Mr. Galan was a cadet of the military college of Chapultepec, a lieutenant in the Mexican army throughout the war with the United States, subsequently a member of the bar in Sinaloa and Lower California, and, after holding various positions of honor and trust in the latter territory, its governor and chief-justice. He resided at Mazatlan from 1869 to 1872, where he was an interpreter and translator of the English, French, Spanish, and Italian languages, and publisher of the newspapers Occidental and La Voz del Pueblo. His testimony relates mainly to the difficulty of taking depositions in Mexico before the Mexican authorities in behalf of claimants, citizens of the United States, under the treaty of July 4, 1868, and his account of the efforts of high officials to intimidate Mexican witnesses and prevent their testimony from being taken in support of American claims, and to sub-

orn testimony in opposition, shows a signal disregard of law and justice in quarters where it would not be expected. His testimony in regard to the forcible seizures of property by the military, the levying of "prestamos," and the illegal and tyrannical conduct of the civil authorities during the time that the company was conducting its operations in Mexico, and subsequent thereto, is as follows (*ibid.*, pp. 497, 498):

Question 16. What officers of the army, under General Corona, were authorized or allowed to exact and collect such "prestamos," or forced loans from foreigners?

Answer. All officers on duty, from major-generals down to lieutenants, and I have known of cases there where non-commissioned officers and private soldiers of that command exacted and collected such prestamos, with or without the authority of their superiors in command. Such cases were common and *an every day occurrence*, during the late wars there, not only during the time covered by the questions, from 1863 to 1867, but even up to the day I left that country, in May, 1872, such exactions were still made and enforced in that military department by said authorities.

Question 17. How do you know or how were you made acquainted with the facts stated by you in answer to the foregoing question?

Answer. By living within the military jurisdiction of General Corona during the time referred to, and by listening to the statements of the military officers of the Republic, many of whom often stated to me that they were ordered by their superior officers in command to make such demands, and to seize, for the use of their troops, all or any provisions or supplies found with any one, or any money, goods, chattels or other things of value, which could be converted into money or supplies for the army, in case they should refuse or neglect to pay such prestamos; and in many cases the said military authorities of the Republic seized and converted to their use the goods, provisions, and other supplies needed by the army, without stopping to make said exactions or of going through the form of levying prestamos. I know the facts, too, by conversing with the sufferers, soon after the depredations were committed there, some of whom were broken up and ruined in their several enterprises, of which General Corona was the chief.

Question 18. Will you please name some of the foreigners of Sinaloa and Durango who have suffered heavy losses, or ruin, as stated by you, on account of said acts of the Mexican military authorities?

Answer. Yes; I know a Spanish house, in Mazatlan, that of Echeguren Harmanos & Co., late "Echeguren Quintana y Co.," who have suffered in this way, *i. e.*, by such prestamos alone, exacted by said military authorities, and the payment enforced from them, to the extent of nearly or quite a quarter of a million of dollars, during the time referred to; and I know of many other foreign houses there who have been compelled by said authorities to pay large prestamos for the support of said army, amongst whom I will name "Echenique Pena y Co.," "Careaga y Co.," "Storzel Bartning & Co.," "Melchers & Co.," John Valcke, and "Kelly & Co.," and amongst the American miners, farmers, and manufacturers who have suffered in the same way, many of them having been broken up and entirely ruined by the said acts of the military combined with the prefects of the districts and other local authorities, I will mention the "Trinidad & San José Silver Mining Company"—John Middleton, of this city, Charles Bouttier, a partner of the above, whose brother, Leopoldo, the superintendent of their mines, actually died from the effects of his imprisonment, who was maltreated and abused in nameless ways while a prisoner, because he had the misfortune to have been born in France, which facts I learned from the Mexican officers themselves; George Briggs, a farmer; one Mr. Elliott; Alfred Howell, a manufacturer at Mazatlan; the "Carmen Mining Company;" Daniel Green, of this city; John Cole, of Camancho, near Mazatlan; "La Abra Silver Mining Company," and James Tobin, this claimant.

John P. Cryder, who was employed as assistant superintendent of the Guadalupe Gold and Silver Mining Company, about a league from Tayoltita, from the last of December, 1867, to the 1st of March, 1868, remaining there until the close of that month, and who was frequently at the company's hacienda, and "intimately acquainted with Mr. Exall," testified as follows (*ibid.*, pp. 375, 376):

I heard said local judge, Nicanor Perez, say he would "run that La Abra Silver Mining Company out of Mexico." He said that "the mines of Mexico belonged to Mexicans," and that his Government had no right to permit the "Gringos," as he called Americans, "to come here and carry off all the best of their metals," and that "the people," he said, "would take care that the ores of La Abra mines don't go away in the hands of these Gringos," and he, the judge, Nicanor Perez, would see that the people of Mexico shall have the benefit of these locos' ('fools') investments.

I recollect that his remarks were made in a prejudiced and determined manner, and in the form of a threat, that he would encourage any act, if necessary, to carry his point against that company, and I so understood it, and communicated the facts to some of the American employés there. This was in *February, 1868. I afterwards told Mr. Exall of the threats of the juez.*

I also heard Macario Olvera, the prefect or gefe politico of the district of San Dimas at that time, February or March, 1868, say that "La Abra Silver Mining Company could not stay in that district;" that "it would be impossible for them to do so." This was at San Dimas; he did not say, positively, what course he would pursue, but he said the authorities were determined to get rid of that company, and they could not stay there and work those mines; he said it would be better for that company to give up their mines and leave the country "before any accident should happen," for which, he said, "the prefect would not be responsible." I asked him what he meant by making use of the word "accident" in that conversation, and he made an evasive reply, which satisfied me that *mischief was meant*, either by the prefect himself or by the people or local authorities, with the acquiescence of said prefect. This said Macario Olvera was, at the time this conversation took place, February or March, 1868, the official and acting prefect of that district. He was called "gefe politico." The gefe politico of a district, in any part of Mexico, is the chief authority, civil, military, and political. I know a man must possess great nerve if he dares to oppose the will of the "gefe politico" in any district of this country. The intimations of difficulties or "accidents" made by said gefe politico against La Abra Silver Mining Company were made in the presence of two or three Mexicans, who evinced immediate approval of said remarks, and considerable of feeling. My suspicions were at once aroused that Superintendent Exall might be in great danger, and that other "accidents" might happen, and *I told Mr. Exall the first time I saw him after this conversation I have related with said prefect.*

It will be remembered that Cryder was an eye-witness of Exall's imprisonment, and that his testimony regarding that occurrence has already been quoted.

The deposition of Mr. Jesus Chavarria was taken on behalf of the company at Durango, July 11, 1872, before Pedro J. Barraza, first judge of letters. A certificate of this judge is attached to the deposition, stating that lawyer Jesus Chavarria is "a resident of this city (Durango), one of its first lawyers, and, by his dignity and well-known integrity, is, beyond all doubt, entitled to full faith and credit."

The whole of Mr. Chavarria's deposition should be carefully read. He testified as follows (*ibid.*, p. 387):

That in July or August of 1867, the year referred to in the question, he was at *San Dimas* on private business, and also at *Tayoltita*, as he has before said; that he went to the mines for the purpose of seeing them, and that he conversed with the gefe politico upon their condition; that in consequence of these he became satisfied that both that officer and the mining people were strongly bent upon annoying and driving the *Abra Company* away, and with which they were continually provoking quarrels; that officer and some of the workmen stated that they believed the company to be annexionists; that it was therefore hateful to Mexico, and they thought it best to drive it away from that mineral anyhow; that, for this purpose, the authorities instigated the laboring people, on the pretext of their wants, not to work for the company; that he further knew that the company's ores were frequently stolen, and that it was not legally protected by the Gefetura, where the superintendent usually made fruitless complaints of the thefts; that that officer [the gefe] also gave him, deponent, to understand that he had a special interest in the expulsion and despoliation of the company, in which case he intended to denounce the mines at *Tayoltita*, and he offered deponent a share in them, which deponent refused, and reproved his conduct in permitting the operatives to steal the ores, which they did with impunity, to the great responsibility of the authorities of that department, who, either by their connivance or indolence, compromised the honor and good name of the Republic.

It will be remembered that Marcos Mora, who was at that time about to retire from the office of prefect, was the author of the order to the company which has previously been mentioned, and that it was under Mora's authority and an "uprising of the people" that Soto sheltered himself for the orders which he had issued to the superintendent of the mines.

It appears that Chavarria had an interview with the incoming prefect, who proved himself a worthy successor of Mora and a fitting ally of Soto. Mr. Chavarria says (*ibid.*, p. 388):

That he met Macario Olvera on the road from San Dimas to Gavilanes; that they conversed together upon the subject referred to in the question, and Olvera acknowledged to him *the plans and intentions existing at Tayoltita, on the part of the authorities and the operatives, to injure and expel the Abra Company from their mines by intrigues, or such direct and indirect means as it would be impossible for them to resist, and that Olvera revealed to deponent that he was interested in that hostility, and in combination with the gefe politico, whom he was going to replace, to carry out the sinister projects before referred to.*

Mr. Chavarria gives the following account of a meeting of the company's Mexican workmen at the house where he and Mora were stopping at Tayoltita (*ibid.*, p. 388):

11th. State whether Marcos Mora, the gefe politico, was visited on the second night of their stay at Tayoltita, in July or August of 1867, at the house where they were stopping, by any of the employés of the Abra Company, or any of the head Mexican workmen who had been in the employ of the company? Also, state all that then and there took place between the said employés and the gefe, Mora, as to their continuing in the company's service; state what the parties named did and said in your presence.

Ans. That all the matters referred to in the question are true; that the greatest disorder prevailed upon that occasion; that the head miners, by order of Marcos Mora, mutinied against the Abra Company and the superintendent; they refused to work any longer in the mines, which *resulted* in the continuance and increase of the *robbery of the ores*, which was *openly carried on in daylight*, and in the presence of the superintendent.

Chavarria also testifies as to what Olvera and Mora told him in Durango, after Exall had abandoned the company's mines and works at Tayoltita, in regard to the cause of the abandonment (*ibid.*, p. 388):

12th. State whether, at Durango, or other places, you have had any conversations with the said gefe politico, Marcos Mora, or his successor, Macario Olvera, since the month of March, 1868, touching the reasons why the Abra Silver Mining Company abandoned their mines and property; and if so, then state all that the said gefes politico told you, and others in your presence, prior and subsequent to the abandonment of the mines, which may throw any light on the subject of the abandonment, and the manner in which this was brought about.

Ans. That subsequent to the time referred to in the question, he conversed with Macario Olvera, in Durango, and also with Marcos Mora, on his frequent visits to him when he was in prison, and was told that the company had finally been compelled to abandon their mines at Tayoltita, through the loss of their property, *owing to the concerted hostility against it in March of 1868.*

Mr. Chavarria also testified of his own knowledge to the failure of the appeals which he made on behalf of the company to the national and State authorities for protection against the wrongful acts of the local magistrates at San Dimas and Tayoltita (*ibid.*, pp. 388, 389):

15th. State whether the protection of the national and State authorities was duly and legally invoked on behalf of the Abra Silver Mining Company, at the end of 1867, to protect it against the unlawful attempts made against it and *the robbery of its property by Mexicans at the instigation of the gefe politico of the district and the local authorities at Tayoltita.* If this be so, then state how you learned the facts. Who was employed by the company as its agent to represent the facts to the authorities? Who was employed and acted as the company's attorney at the time the said protection was invoked? State what was told him, and what was done in his presence by the national and State authorities when the said protection was asked for and in reply to his petition.

Ans. That the matter stated in this question is true in all its parts; that deponent employed by Mr. Rice, of California, as Exall's lawyer, *repeatedly solicited, from the State government protection for the Abra Company, to suppress the robberies and outrages which the company were experiencing at Tayoltita, but all to no purpose, as, after innumerable steps and measures, the executive of the State never even so much as requested the authorities at San Dimas to comply with their duties. The only answer given was, that the government of the State, at whose head was Francisco Ortez de Zarate, in 1867, would not meddle in private matters.*

This corroborates Mora's testimony, already quoted, on the same subject, and, with the testimony of the company's employés, conclusively establishes the allegation of the memorial and justifies the umpire's conclusion that the company was denied due protection in Mexico.

Mora was afterwards imprisoned for malfeasance in office and Olvera was killed in a riot among the miners.

Proof that an immense quantity of ore was stolen.

Further testimony could be cited sustaining the allegations of the company's memorial and of its last superintendent in regard to the stealing of the ores, both before and after the abandonment. The witness, Cole, testified that he had "frequently *seen* them (the Mexicans) packing off said ores from the works of said company, in sacks upon mules' backs, in March, April, and May, 1868" (*ibid.*, p. 363), and, as already noticed, Mexico's subagent, in her proceedings to subvert the award, Mr. Alfred A. Green, who was at Tayoltita in January, February, and March of that year, testifies to the same effect. But there is a mathematical demonstration of the truth of the company's claim that the best of the ores that were abandoned have been removed since the abandonment. The quantity of ore left on the patios when the property was abandoned has been estimated by some of the witnesses for the Mexican Government as high as from 10,000 to 14,000 cargass. This was the estimate of Mr. Jesus Torres (*ibid.*, p. 443).

No witness makes the quantity less than 700 or 800 tons. The umpire found the quantity to be 1,000 tons. One of the three witnesses brought up by the Mexican Government from Mexico in the recent investigation testified before the subcommittee that the pile of ore at the hacienda was "the same size the last time he saw it as it was the first time"; that "there is about 500 or 600 cargass;" that he *first* saw it when he went to work in the mines." This was in 1871, as fixed by the date of the denouncement of "Rosario," including "La Luz"—the mine referred to by the witness (Francisco Torres) which he worked in partnership with James Granger, in whose name the denouncement had been made (*ibid.*, p. 335). Jesus Torres swore that when the company abandoned the mines in March, 1868, there were from 10,000 to 14,000 cargass of ore (most of it he said was worthless rock) at the hacienda. Francisco Torres swears that in 1871, about three years subsequent to the abandonment, there were only 500 or 600 cargass left. What had become of all the rest?

The Report of the House Committee on Foreign Affairs in the Forty-ninth Congress.

A careful examination of the evidence which was submitted to the Joint Commission both on behalf of the company and the Mexican Government, and of the testimony recently taken by the subcommittee has led the undersigned to the conclusion so forcibly expressed by Representative, now Senator, Daniel, in his report from the House Committee on Foreign Affairs, of August 5, 1886, against any revision or disturbance of La Abra award. The House committee's report seems all the more impressive because it affirms the power of Congress to make provision for a judicial investigation of the award, as provided in the bill now under consideration (S. 2632), but concludes, *upon the merits*, that the award should not be re-opened. The letter-press copy-book and Exall's letters were carefully examined, and their authenticity was not ques-

tioned by the committee. The report disposes of this feature of the case as follows:

Superintendent Exall's contradictions of his testimony as revealed in his letters, now produced for the first time, are given great importance, and stress is laid upon them as imputing that his testimony was false and the claims of the company purely pretentions.

It should, however, be remembered that Exall was acting for his own interest, and that his letters conformed to what that interest seemed to require. He was a creditor of the company. He was in Mexico, and needed money, and as an inducement to the company to send him money he apparently colored the facts he recited in his newly-presented letters under the impulses of the moment, and described conditions to suit his necessities. We can not justly hold the company responsible for his course any more than we could justly hold a nation responsible for the conduct of a traitor. True, his testimony is apparently discredited, but *he is dead*, and explanations which, if living, he ought to make *are now impossible*. But, did this case rest upon his testimony, it would be nevertheless discredited, and in our opinion it should be disregarded; and, *disregarding it*, there is an *abundance of sound testimony to sustain the award*.

The explanatory affidavit made by Exall shortly before he died, and which is now in evidence and has been considered at length in this report, was not before the House committee, the original having disappeared from the files of the Senate Committee on Foreign Relations, to whom it had been presented in August, 1882, and an examined copy not having been produced and proved till the recent investigation. (Appendix, pp. 939-941.)

The grounds on which the House committee reported against any interference with this award are summarized by Mr. Daniel as follows:

Undoubtedly some of the items of the large claim asserted against Mexico by the La Abra Company are shown to have been exaggerated and others unfounded. But this remains when all that can be reasonably said in favor of the interference proposed has been considered—*that there was ample evidence before Sir Edward Thornton that is not impugned by any new evidence to have sustained and warranted his award*; that the award did *not* embrace damages on account of the items that have been surcharged or apparently falsified; that that award was far below what was claimed; that it was far below in amount the damages which, in the opinion of unimpugned witnesses, the claimant's company suffered; that it did not embrace speculative damages; that the mistreatment of the company by Mexican officials and people is proved by their own testimony, and that (conceding all that by reasonable intendment the newly-discovered evidence proves) the award made had ample foundation in testimony not successfully impeached, and was not in excess of fair compensation for losses suffered according to that testimony.

The United States has never undertaken to be themselves the judge of the legitimacy of these claims, nor could they do so. They were a party to the arbitration, not the arbiter. The legitimacy of the claims was the very question submitted to the court of arbitration under the treaty; and while it is true that with an exalted and refined sense of honor, which of its own intuitive impulse refuses the fruit of wrong, the United States will interfere to arrest palpable frauds and impositions practiced by or for the benefit of its citizens. It is also true that they should not attenuate that sense of honor into a Quixotic spirit, and exert their powers to override the most sacred settlements not palpably or apparently obtained by fraud. Were this case reopened by *any* form of procedure, abundance of evidence would be found unimpeached in the records before Sir Edward Thornton to justify his judgment. The new case, like the old one, would be a case where truth had to be sought under a mass of contradictions, and at the end of it—whatever that end might be—there would be as much room to question the propriety of the decree as there is now.

Indeed, *such a case as this can never be ended save by the finality that belongs to adjudication*. Affidavits and counter affidavits—allegations of intimidation and extortion—recantations and recriminations and reassertions bestrew the record, and no one who reads its heaps of testimony (taken without regard to technical rules, and with no sort of discrimination between direct and hearsay evidence) can reach any other conclusion than that the details of exact truth are impossible of ascertainment, and that any decision should be predicated upon the few landmark facts which are established.

This Sir Edward Thornton evidently well appreciated. He did not discuss the minutiae of evidence, or refer to that of any single witness. He did not award the speculative damages claimed, or follow counsel in any of the niceties of their argumentation. With the spirit of a wise chancellor he looked at the facts which rose up out of

the *debris* of testimony, and upon them rested his judgment. *Those facts remain, and that judgment, in our opinion, should stand;* and we fail to see that the honor or conscience of the United States is concerned to disturb it.

Mexico had full and fair hearing. The great mass of cases was decided in her favor, and the only maxim which we conceive is now wisely applicable to this claim is that which tells us *it is to the interest of the Commonwealth that litigation should cease.*

The course pursued by the Mexican Government in endeavoring to impeach La Abra award.

By the treaty of July 4, 1868, providing for the settlement of claims of citizens of the United States against Mexico and of citizens of Mexico against the United States, the two Governments entered into the following agreement:

The President of the United States of America and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the umpire, as the case may be, as *absolutely final and conclusive* upon each claim decided upon by him or them respectively, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

The first installment was due upon the awards, and was paid by the Mexican Government to the United States on the 31st of January, 1877. On the 21st of November, 1876, the Mexican agent, Mr. E. Avila, addressed a communication to the Mexican minister at Washington, in which it was stated that at the meeting of the agents and secretaries of the Joint Commission held the day before, the Mexican agent had presented certain statements in writing, with a view that they should be inserted in the record of the proceedings of the day, but it was not so done, because both the agent and the secretary of the United States did not think it proper. One of these statements was a reservation of "a right on the part of the Mexican Government to show, at some future time, and before the proper authority of the United States, that the claim of La Abra Silver Mining Company was fraudulent and based on affidavits of perjured witnesses, with a view of appealing to the sentiments of justice and equity of the United States Government, in order that the award made in favor of the company should be set aside." The minister inclosed a copy of Mr. Avila's communication to Mr. Hamilton Fish, who was at that time Secretary of State, remarking "that the manifestations contained in the annexed note of Sr. Avila are in accord with the instructions he has received from the Government of Mexico." Mr. Fish replied to the minister on the 4th of December, 1876, in a letter from which the following sentence is taken:

I must decline, however, to entertain the consideration of any question which may contemplate any violation of, or departure from, the provisions of the convention as to the final and binding nature of the awards, or to pass upon, or by silence to be considered as acquiescing in, any attempt to determine the effect of any particular award.

The Mexican minister replied on the 8th of the same month that there was no intention to "put in doubt the final and conclusive character of the above-mentioned awards;" that Señor Avila had only expressed the *possibility* that the Mexican Government might at some future time have recourse to some proper authority of the United States to prove that the two claims he mentioned were based on perjury, and that, "if such an appeal should be made, it will not be resorted to as a means of discarding the obligation which binds Mexico, and that, *should it prove unsuccessful*, the Mexican Government will recognize its obligation as before."

On the 20th of December, 1876, Mr. Fish sent a dispatch to Mr. Foster, who was at that time United States minister in Mexico, acknowl-

edging the receipt of a dispatch in which he had stated that the Government of Porfirio Diaz had applied for a loan of \$500,000, and had represented that \$300,000 of the amount would be payable to the Government of the United States in the course of the next month. Mr. Fish inclosed with his dispatch to Mr. Foster a copy of a protocol, with an account of the expenses of the Joint Commission, showing a balance of \$57,499.01 in favor of Mexico, and suggested that the Mexican Government, if it chose, could deduct the whole of that balance from the first installment of the awards payable to the United States. This was done, the whole of its contribution to the expenses of the arbitration being taken from La Abra award, and the first payment was made on the 31st of January, 1877, as stated.

The contract of March 29, 1877, between the Mexican Government and General James E. Slaughter, of Mobile, Ala.

It appeared in the recent investigation by the subcommittee that notwithstanding the positive refusal of Mr. Fish to consider any question involving the finality of any of the awards, the Mexican Government on March 29, 1877, entered into an agreement with General James E. Slaughter of Mobile, Ala., in which he agreed, "for the considerations hereinafter named, *to undertake the proof of fraud* in the claim of the La Abra Mining Company against the Government of Mexico."

This contract, it will be seen, was entered into by and between the debtor Government of Mexico and a private citizen of the United States, about six months after the umpire's denial of Señor Avila's motion for a rehearing of the claim, three months after the aforesaid notification from Mr. Fish, and *prior to any distribution*.

The contract further provides that General Slaughter shall "send an agent to Mexico for the purpose of securing testimony in proof of the fraudulent character of said claim." Now, it will be remembered that the Mexican Government was informed as to every witness whose testimony had been taken in Mexico for or against the claim, and as to what each deposition contained, and that it had the whole machinery of its courts of justice to employ in the detection, proof, and punishment of perjury if any of these witnesses had perjured themselves in their depositions which were filed with the Joint Commission. Why should a citizen of the United States be employed in this business and why should he be required to send a subagent to Mexico "for the purpose of securing testimony in proof of the fraudulent character of said claim?" The contract also provided that *Slaughter* was "to pay the expenses of such agent as far as the City of Mexico, and to secure such assistance as may be necessary in preparing the evidence so obtained and presenting the same to the proper authorities of the Government of the United States." Why should Slaughter or any other citizen of the United States be employed by the Mexican Government to do such work in Mexico and to present the results to the proper authorities of the Government of the United States? If the thing was proper or allowable to be done at all should it not have been done by the Mexican Government through its regular channels of communication with the Government of the United States? And was not this the very thing that the finality clause of the treaty was intended to prevent?

In this contract with General Slaughter the Mexican Government agreed to "secure the payment by said Government of all expenses incurred by the said agent of the party of the first part *after he shall have arrived in the City of Mexico*, to see that *all facilities are furnished by*

said Government to enable him to secure the necessary testimony, and to pay by draft, payable as hereinafter specified, one-half of the expense incurred by the said party of the first part in the preparation of evidence and the presentation of the same to the proper authorities of the Government of the United States; provided that such expense shall not exceed the sum of \$3,000 American currency."

Under this contract, the like of which is probably not to be found in the annals of diplomacy, the compensation of General Slaughter was to be *entirely contingent upon his success* in accomplishing "the final waiver or withdrawal of said claim or any portion thereof, as the case may be, by said authorities of the United States Government." The award was for \$683,041.83. The general was to have 10 per cent. of this amount or of any part of it which the Mexican Government might not be finally required to pay. He would be entitled to more than \$60,000 if the award were entirely subverted, and his work was commenced and his contingent compensation promised before a dollar of the award had been distributed. There was no fund for paying the subagent who was to be sent to Mexico anything but "expenses," and it is reasonable to suppose that his agreement with General Slaughter for compensation was also contingent in whole or part upon the success of the undertaking. This contract, to which the committee makes no allusion in the majority report, is printed in the appendix to this report and is well worthy of careful study and consideration.

It will be remembered that the fisheries award, which was rendered at Halifax under the treaty of Washington in 1877, was attacked in the newspapers and in Congress as having been based upon fictitious evidence which had been imposed upon the Commission by fraud and perjury; and that Mr. Evarts, who was then Secretary of State, protested against the award and contested its validity upon other grounds, including the objection—fatal if sustained—that the Commissioners had not confined their inquiry or their decision within the limits of the submission, but had taken elements of value into consideration which they were not required or authorized to consider by the terms of the treaty. This protest and the earlier dispatch of Mr. Evarts to Mr. Welsh were considered and repelled by Lord Salisbury, and the payment of the \$5,500,000 was made by the United States as provided in the treaty. If between the rejection of the protest and the payment of the award the Government of the United States, by its minister at the court of St. James, had entered into a contract with a British subject, engaging his services to obtain evidence of fraud in the preparation of the proofs upon which the award was founded, and agreeing to pay him a percentage of the amount from the payment of which the United States might be eventually relieved, there can be no doubt how the proceeding would have been regarded by the British Government—especially if the British subject with whom the contract was made should, in accordance with its terms, have addressed a petition to the British Parliament or appealed to its members in promotion of legislative measures against the award.

Of course, the Government of the United States would never for a moment entertain the idea of such a course of procedure, but sometimes a clearer view of a certain line of conduct may be obtained by supposing an analogous case with a change of parties.

General Slaughter sends an agent to Mexico.

It appears from the testimony of General Slaughter that the agent whom he employed to go to Mexico, in accordance with the terms of

his contract with the Mexican Government, was Mr. Alfred A. Green—the same person who had made a deposition on behalf of the company before the Joint Commission, and had preferred a claim, unsuccessfully, on his own behalf, against the Mexican Government before the same tribunal. Previous to this adverse decision, Mr. Green, who had been much in Mexico and spoke the language fluently, had assisted General A. W. Adams in taking depositions on behalf of the company in Mexico, but afterwards quarreled with him in regard to compensation. This quarrel is described in ex-Consul Sisson's testimony before the subcommittee (*ibid.*, p. 801). General Slaughter had met Green in Mexico. How they met again in Washington and came to an agreement in this Mexican business is told by General Slaughter as follows (*ibid.*, p. 914):

Q. Do you know a man by the name of Green?—A. Yes.

Q. Did you employ him to assist you?—A. I sent Green to Mexico to get that press letter copy-book.

Q. When was that?—A. That was a short time after I signed that contract. I sent him immediately afterwards. I had never seen Green since I met him in Mexico. I had never heard of Green being in the case at all. I accidentally met Mr. Green here in Washington, and I had known him in Mexico, and known his brother very well. I walked over to Willard's with him and took a drink and asked him if he knew anything about this business. He told me he did and went on to tell me what it was; said he thought it was a fraud, and all that sort of thing.

Q. We do not care anything about that.—A. I asked him, "Green, can you get me the evidence of this thing?" He says, "Yes, I can." Says I, "Would you be willing to go to Mexico and get these papers for me?" He said, "Yes; I would." I said, "When will you go?" He said, "Any time." "Very well," says I, "I will pay your expenses and send you out there and give you so much if you will go out and get these papers." And I sent him, and he furnished the Mexican Government—did not furnish me—but in reply to my sending him out there this press letter copy-book was sent back through the Mexican Government to Washington, directly here. It did not come to me at all.

Q. Now, did you have any written agreement with Green as to what he was to do?
Mr. FOSTER. I object. I think we have got to a point where we must object. * * *

Green went down to Mexico on this mission, and while he was in San Francisco he met Capt. Charles B. Dahlgren and told him that Adams had boasted that "he had obtained Dahlgren's signature (to his deposition in behalf of the company) by the use of a good round sum of gold." Dahlgren seems to have believed that Adams, who was largely interested in the award, had made such a statement as that, and he thereupon wrote the letter to Mr. Robert Lyon (Lines) of November 12, 1877, which has been printed in the "new evidence offered by Mexico" as proof that Dahlgren's deposition had been "forged." Dahlgren was examined by the subcommittee, and his examination will be alluded to hereafter. Counsel for the claimant offered affidavits to prove that Green had endeavored to suborn perjury in Mexico in his employment under his contract with General Slaughter, for the purpose of impeaching this award, but the offer was refused by the subcommittee on the ground that the affidavits were *ex parte*. To this, counsel replied that the affidavit of William R. Gorham of March 23, 1872, alleging that Green did not sign his deposition which was submitted to the Joint Commission on behalf of the claimant, was *ex parte*, and that it had not been followed up by the Mexican Government in producing Gorham or Green before the subcommittee, and that it was not fair, after having made such a charge in the formal presentation of its case to the Department of State and to Congress, and having had the benefit of the consequent suspicion, to leave it in that shape. It appears, however, that before he entered into the service of the Mexican Government, under the Slaughter agreement, his character had been assailed by the agent of Mexico in his motion before the umpire for a new hearing of the claim. In his

attack upon the company's witnesses (to which the umpire rather drily alludes in his denial of the motion) Señor Avila remarked (Ex. Doc. No. 103, House of Representatives, Forty-eighth Congress, first session, p. 90):

Neither can be considered as a respectable witness Alfred Green, the pretended liberator of Mexico, who tried to defraud that nation by presenting a fraudulent claim.

General Slaughter employs an attorney in Washington who employs detectives in New York.

While Green was trying to liberate Mexico from paying all or part of La Abra award, under his subcontract with General Slaughter, by collecting "newly-discovered evidence" in the vicinity of the mines, another subagent of General Slaughter was at work for the same purpose in this country. This was Mr. Robert B. Lines, who testified before the subcommittee as to his employment by General Slaughter (Appendix, p. 922). And General Slaughter also testified that he "employed Mr. Lines soon after signing the contract" (*ibid.*, p. 914). Thomas J. Fisher, a New York detective, testified before the subcommittee that he was employed by Mr. Lines in that city early in the year 1878 (*ibid.*, p. 879) "to make the acquaintance (of Exall) and find out if possible from Exall what the facts were; take means to do that."

In his direct examination Fisher testified (*ibid.*, p. 882) that he might have given Exall to understand that if he would unswear what he had sworn to before the Commission, it would be of advantage to him; but that "General Slaughter was very anxious to obtain these facts *for the purpose of having Exall indicted.*" Fisher said it was a pretty hard thing for him to say what his instructions were; that he did not remember of any particular instructions given him at the time (*ibid.*, p. 884):

Q. Were you authorized to offer him any thing?—A. I never was. Of course I reported and told General Slaughter what he had said and the amount that was mentioned. That was talked over, and General Slaughter *distinctly said to me that he did not want to negotiate for a thing, or did not want any proposition made, unless he knew just exactly what were in his possession—find out what he had in his possession.*

Q. "The amount mentioned." By that do you mean the \$25,000?—A. Yes.

Q. Mentioned by Exall?—A. Mentioned by Exall and Kittelle both.

Q. Was there any formal offer on the part of Mr. Exall or Mr. Kittelle in relation to the sale of documents; if so, what was it?—A. Yes, there was on the part of Exall.

Q. Please state what it was.—A. Mr. Exall proposed—

Mr. KENNEDY. Just say what he said.

The WITNESS. Well, Exall said that if there was an offer made of \$25,000 for these papers and documents that he had he would produce them, or that was what he said in substance.

* * * * *

Q. What did General Slaughter say to you, if any thing, as to any expectation of getting evidence out of Exall's mouth to convict him of perjury?

* * * * *

The WITNESS. I don't remember that General Slaughter gave any instructions to get it in any particular way. The object was to get it. I don't remember whether—

Q. To get evidence that would convict Exall of perjury?—A. Yes.

Q. Now, Mr. Fisher, in these conversations which you had with Exall or Kittelle did you say any thing to either of them as to *any protection to be afforded to Exall from criminal prosecution?*—A. No, sir; I don't remember that I ever did. I don't think I ever did.

Mr. Fisher also testified on his direct examination (*ibid.*, p. 823) that—

The *first* intimation of documents came from *Exall* himself. The first that I ever heard in relation to there being any papers or valuable documents in existence came from Exall himself.

But being cross-examined with reference to a time prior to his acquaintance with Exall, Fisher testified as follows (*ibid.*, p. 887):

Q. Now, can you tell us substantially what it was that Mr. Lines said to you at that *first* interview; not the very words, but the substance of it?—A. Well, I remember that he spoke to me in relation to this claim, and that an effort was to be made to set it aside or open it, and that they wanted to have evidence on that point; secure evidence of this award being an unjust one.

Q. Now, what did he say, if any thing, about Exall?—A. Well, my impression is that he told me that Exall—at least, I know that he told me that Exall had been connected with this company as an officer or secretary; that he held a position in the company. I forget exactly what it was, but that he held a position in the company and *was liable to have books and papers and documents in relation to it that would show the exact state of affairs; the exact amount of the loss that had been sustained by these parties.*

And, being pressed in regard to General Slaughter's alleged purpose of having Exall indicted for perjury, Fisher gave the following testimony (*ibid.*, pp. 888, 889):

Q. Now, what steps, if any, were you instructed to take to show that Exall's testimony was perjury?—A. Well, as I remember it, my instructions were directed particularly toward getting these papers and documents that he had.

Q. Well, how did you expect to prove Exall's alleged perjury by documents in Exall's possession that you wanted him to turn over to you?—A. Well, I had not any knowledge of what these papers and documents were; he never stated what they were, except he stated they were very important and very valuable to the party that General Slaughter represented.

* * * * *

Q. What did you say to Exall in regard to the testimony that he had already given?—A. Well, I have not any recollection that I ever spoke to Exall in relation to any testimony he had ever given. I don't think I did. I don't know that there was—I am almost positive there was not anything said on that point, whether Exall knew that I knew that he had testified I have no knowledge.

Q. Do you mean to say that there was never anything said by Exall to you or by you to Exall in regard to *the position in which Exall would place himself by giving you documents or any testimony showing that he had previously perjured himself*?—A. Well, I believe there was—my recollection is that there was something said upon that point, that the documents that he had in his possession would put him in a false position. There was something said upon that, I remember, but what it was exactly I can not recall.

Q. Well, how did you meet that objection?

* * * * *

The WITNESS. Well, it would be pretty hard for me to say what I told him. I was liable to tell him a good many things for the purpose of getting evidence out of him.

* * * * *

Q. Certainly. Now, I ask you what you did tell him?—A. Well, I could not state exactly what I told him.

Q. Well, give us your best recollection?—A. Well, I could not tell you from memory what I told him. *I have not any doubt that I told him it could be arranged satisfactorily, so that no harm would come to him. I have no doubt I told him that. I have no doubt that I did.*

Prior to Fisher's examination George W. Kittelle had testified before the subcommittee that he had consented to be introduced to the detectives, Fisher and Weed, in New York, at the request of Mr. Ely, for the purpose of finding out what their object was in approaching Exall, and who were their principals; and Kittelle had produced a letter written by Fisher to Exall while these negotiations were in progress. When Fisher was examined he did not know that this letter was in evidence, and, in his cross-examination, he was at first quite positive that he had never been notified by Mr. Lines or General Slaughter, or otherwise informed, that the Mexican minister, Mr. Zamacona, was expected to be

present at a conference on this business in New York. Fisher's letter to Exall is as follows (*ibid.*, p. 774):

NEW YORK, February 4, 1878.

DEAR SIR: The Mexican minister is expected to arrive in this city either to-morrow or Wednesday, and I should like to see you *before I see him*. Will you please let me know what time and place it would be convenient for you, and I will call upon you? Please address me by bearer or in care of the door-keeper of the Broad street entrance of the Stock Exchange.

Yours, respectfully,

THOMAS FISHER.

CHARLES EXALL, Esq.

After reading this letter Mr. Fisher was examined as to his purpose in writing it, as follows (*ibid.*, p. 908):

Q. Exactly. In other words you wanted to get a little more definite information in regard to these papers before you communicated with the Mexican minister as to the \$25,000. Is not that so?

The WITNESS. I say that I did want to get from Exall information before I communicated about the \$25,000.

By Mr. WILSON:

Q. Well, you had already received from him the statement that he had these papers?—A. Certainly.

Q. You had already received from him the statement that he thought they were worth \$25,000 to the Mexican Government?—A. Yes, that he thought so.

Q. That he claimed they were worth that; you had received that?—A. Yes.

Q. But you had not received any definite information as to what the papers contained?—A. I had not.

Q. But you had communicated before this time to Mr. Lines or to General Slaughter what Exall had said to you about these papers?—A. Undoubtedly.

Q. Yes, you had communicated that to General Slaughter and Mr. Lines?—A. Yes.

Q. Very well; but you were not able to communicate to them what the papers contained or give them very definite information as to what they were?—A. No, sir.

Q. And you wanted to get a further interview with him in respect to these papers?—A. Yes.

Q. And so you wrote him this letter; is that it?—A. Well, I don't remember exactly what the object was in writing that letter to him, but it was something in relation to that.

Q. Well, you wrote him this letter after you had received all this information?—A. From him?

Q. Yes.—A. Undoubtedly.

Q. And after you had communicated what you had received from him to Mr. Lines and General Slaughter?—A. Yes.

Q. Now, you say to him that "the Mexican minister is expected to arrive in this city either to-morrow or Wednesday, and I should like to see you *before I see him*," and you say that when you wrote that letter you wrote it with a purpose of getting more definite information about these papers?—A. I did.

Q. We will leave that right there. Now, will you tell us who paid you for your services in this matter?—A. Mr. Lines.

Mr. Lines's negotiations with Mr. Elder.

Mr. Lines at this time was also negotiating with another former employé of the company, Mr. A. B. Elder, for documents which he claimed were in his possession, and Mr. Elder had sent a letter which he had received from Mr. Lines to General Bartholow, who, it will be remembered, was one of the company's stockholders, and its first superintendent at the mines. In this letter, which is dated at Washington, January 17, 1878, Mr. Lines alluded to the negotiations which he was conducting, through the detective Fisher, with Exall in New York, as follows (*ibid.*, p. 635).

Exall is in New York. I have not his address, but my agents are in communication with him, and he shows, as I am informed, a disposition to purge himself of the false swearing into which he was undoubtedly led by older rascals.

S. Rep. 2705, pt. 2—4

The expression—"to purge himself"—used by Mr. Lines at the time, shows that he and his principals—General Slaughter and the Mexican minister—were trying to induce Exall to "unswear" what he had sworn to in his depositions on behalf of the company before the Joint Commission, and swear to a different state of facts. In his own testimony and in his examination of Mr. Elder, Mr. Lines was careful to discriminate between documentary evidence, which he admitted he would have advised the Mexican Government to purchase, if of the kind desired, and one's own affidavit, which he held could not properly be purchased. He also said that when he wrote to Elder that Exall was showing a disposition "to purge himself," he did not use the expression in its technical sense. But Mr. Lines's unstudied statement in his contemporaneous letter to Elder, taken in connection with Mr. Kittelle's positive testimony on this point (*ibid.*, pp. 768, 772, 773), and the probabilities indicated by the situation, would show conclusively that it was new testimony from Exall himself, under oath, as well as any books or papers of the desired character he might possess, that the Mexican Government, by its agents, was trying to obtain. On this point Mr. Lines testified as follows (*ibid.*, p. 928):

Q. Now, you go on to say, referring to Exall: "And he shows, as I am informed, a disposition to *purge himself* of the false swearing, into which he was undoubtedly led by older rascals." Who was it that gave you that information?—A. Mr. Fisher. He informed me that Exall claimed to have papers, documents, and to be willing to furnish them.

Q. No; but you say that "he shows a disposition to *purge himself* of the false swearing." What did you mean by that?—A. Well, I did not use that in the technical sense. I was not corresponding with a lawyer, and I meant merely that Exall showed a disposition, as I was informed, to furnish testimony which would show the truth of the matter.

Q. Well, do I understand you that if a man *who had sworn falsely* was willing to sell documents in his possession for a good round price that you would call that *purging himself*?—A. I would not call it so in a conversation between you and me, but in a letter of this kind I might do so. That was all I meant, at least, by the expression.

But Mr. Elder, who was produced before the subcommittee as a witness on behalf of the Mexican Government, had written to General Bartholow, inclosing an alleged "verbatim" copy of a portion of another letter received by him from Mr. Lines, which reads as follows (*ibid.*, p. 636):

[Copy of a letter from R. B. Lines to A. B. Elder, copied by A. B. Elder].

Verbatim.]

WASHINGTON, D. C., February 17, 1878.

Your evidence backed by these memoranda in view of your position ought certainly to be conclusive. Sundell said in Sept. the ores were all there. The lobby in behalf of the Co. finding itself unable to suppress investigation is now trying delay it with more success. Just when it will commence is still uncertain. Let me know what you will furnish the memoranda *sworn to* by you and Exall letter for.

Exall is in N. Y. and I think in a few days we shall have his papers. My agents are in communication with him in N. Y., and he is weakening very rapidly. I shall be glad to forward to him anything you may offer. I do not know his address, as everything is done through my agents.

There is much in the letter not in this.

[In pencil:]

Yours,

R. B. LINES.

A. B. ELDER.

I have an offer to go to China. Silver mines there. Do you want any stock in the Co.? The prospects are good. May be so; dividends.

It is only fair to Mr. Lines to say that in his testimony before the subcommittee he said (*ibid.*, p. 930):

These words, "*sworn to by you*," I am very positive, were not in any letter I ever wrote to Mr. Elder.

In one of his own letters to General Bartholow, Elder states plainly what the Mexican authorities wanted from him and what they had offered him for it. He had fixed the price at \$10,000, and the following was evidently intended to draw out a bid of something over \$8,500 for his wares (*ibid.*, p. 639):

LONE PINE, CAL., April 5, 1878.

General BARTHOLOW:

DEAR SIR: Yours of the 24th ult. come duly to hand and contents noted. I sent to you a few days since a postoral card asking the return of Mr. Lines's letter. If you have not already started it you need not be in a hurry about doing so. In a letter from Washington a few days since they, through an agent, have offered \$1,500 *less than I asked* them; *they want my deposition* and the letter and memoranda, and I think I will accept, as I have been losing in the sheep business for the last year.

As for the Co. for China, it is not perfected yet. I will let you know more of it soon.

Hoping, yours truly,

A. B. ELDER.

Elder's letters to Mr. Lines had been printed in the "New evidence offered by Mexico" with certain insinuations and charges against the company, the falsity of which was shown by Mr. Elder's cross-examination before the subcommittee, as follows (*ibid.*, p. 593):

Q. Now, I wish to direct the attention of the witness to the statement of the Mexican Government on page 428 of Ex. Doc. 103, under the title of "New evidence offered by Mexico." I will read you a sentence or two:

"Herewith are transmitted the originals of certain letters addressed by A. B. Elder, the assayer for La Abra Company, to the Mexican minister and Mr. Robert B. Lines. Mr. Elder desired to find a market for the knowledge which he possessed of the affairs of La Abra Company. He was informed that if he had any documents, clearly authentic, bearing upon the case, *there might be room for a negotiation*, but that affidavits were not regarded as purchasable. Mr. Elder claimed to have such papers, and was asked to produce them and name his price. This, as his letters show, he failed to do, and the correspondence with him was dropped. He appears, however"—And this is the point to which I invite your careful attention—"He appears, however, to have *found a market* for the letters addressed to him in reply by Mr. Lines." Now, I want to ask you whether it is a fact that you ever found any market anywhere for the letters addressed to you by Mr. Lines?—A. *Never in the world, sir.*

Q. Is there the slightest foundation in fact for the assertion of the Mexican Government which I have just read to you? Did you ever offer any of Mr. Lines's letters for sale to anybody?—A. *Never.*

Q. Did you ever receive anything for any of Mr. Lines's letters from anybody?—A. *Not one cent.*

Q. Did anybody ever offer to pay you one cent for any of Mr. Lines's letters?—A. *Never.*

Elder not only contradicted thus explicitly the intimation in Mexico's "New evidence" that he had found a market for the letters addressed to him by Mr. Lines, but he also testified to the falseness of the charge which the Mexican Government had made against the company as follows (*ibid.*, p. 595):

Q. Now I invite your attention to another sentence in your letter of April 8, 1878, to Mr. Lines: "Through some party, to me unknown, I am offered a good show to go to China to look after a silver mining company's affairs." I ask you who it was that made you that offer?—A. Well, I don't know who it was that made me that offer.

Q. I ask you whether you have any reason to suppose that it was made to you by any officer, or other party interested in La Abra Company?—A. *I have no reason to believe so.* Such propositions were often made to me.

Q. It was nothing uncommon?—A. Nothing uncommon.

Q. You had been mining how long?—A. Ever since 1853.

Q. Now, I want to invite your attention to the statement made by the Mexican Government in regard to that China business, on page 430 of that same document, No. 103, under the title of "New evidence offered by Mexico." I now read to you, Mr. Elder:

"*Either Mr. Elder has exhausted La Abra treasury, or else the persons conducting the affairs of that company have swindled him, as they did their other witnesses, by failing to carry out their contract and send him to China.*"

Now, I ask you whether there is the slightest foundation in fact for the allegation that you had any contract with any officer of La Abra Company, or with the company itself, to go to China, or for the allegation that they swindled you by not sending you there?—A. *None whatever.*

Q. Can you think of any reason for such a statement being made?—A. *I can not imagine any. I certainly never received any such proposition from any member of La Abra Company.*

It will have been observed that the “offer to go to China” was communicated by Elder in his letter of February 17, 1878, to General Bartholow (*supra*), and not by General Bartholow to Elder. It is certainly quite a remarkable feature of this recent investigation by the subcommittee that one of the most serious charges made against the company by the Mexican Government in its formal presentation of its case to Congress and the Department of State, should be proved false by one of its own witnesses, and that witness of all men necessarily best informed as to the fact.

It seems clear that if Elder’s memorandum book had really contained what he said it did, he would have sworn to its correctness and sold it to the Mexican Government, but he never produced it, or any other papers, although he received the following considerate assurance from Mr. Lines (*ibid.*, p. 635):

You may rest assured that there is no disposition to take advantage of your voluntary offers or to use your information which is of unquestionable value, to your prejudice.

Elder failed in his efforts to use Mr. Lines’s letters as an inducement to General Bartholow or La Abra Company to enter into competition with the Mexican Government for what he had to sell, and he had shown himself so evidently purchasable, or Mr. Lines was so sure that he had nothing worth buying, that in preparing the statement of the “new evidence offered by Mexico,” Mr. Lines dismissed him, but nevertheless printed his letters and availed himself of the occasion to make a charge of the most infamous conduct on the part of La Abra Company, which, according to the Mexican Government’s own showing before the subcommittee, was without any foundation or color of excuse.

After a lapse of ten years the Mexican Government seems to have thought that something could still be made out of Elder, and he seems to have thought that something could still be made out of the Mexican Government. He was subpoenaed on behalf of the Mexican Government by the subcommittee on the 14th of January, 1889, in a telegram from the Sergeant-at-Arms informing him that he would be allowed mileage at the rate of 5 cents per mile each way and \$3 per day while detained in Washington (*ibid.*, p. 622). He responded immediately:

I must see money, and *more than you offer*, before I leave home.

The Sergeant-at-Arms replied:

You will be allowed [no] more than the law allows, and the United States Senate commands you to come.

To which Elder responded:

I am *not of the kind* that works for \$3 per day, nor will I leave here without money to pay all expenses liberally, and I will come near *having something to say about it*.

This was January 16. The same day he telegraphed again:

Send \$500. Will leave on 20.

Elder seems to have been in some confusion of mind, for he testified on cross-examination, in explanation of his telegrams, that he did not know which side had subpoenaed him, and that before reporting to the

Sergeant-at-Arms he went to see the company's counsel in Washington. He thought that perhaps it was the company that wanted him.

As a sample of the manner in which Mexico would impeach Sir Edward Thornton's award in this case, if the Senate bill under consideration should pass, and the Court of Claims should take jurisdiction, some extracts from Elder's cross-examination are appended (*ibid.*, p. 625):

Q. Did you report to the Sergeant-at-Arms when you arrived in Washington?—A. I did not.

Q. How long were you in Washington before you reported to the Sergeant-at-Arms?—A. I got in Friday, after 9 o'clock.

Q. When did you report to the Sergeant-at-Arms?—A. Monday morning. I was sick *Saturday and Sunday*; did not get out of the hotel.

Q. What day was it that you were at Judge Shellabarger's office?—A. *That was Saturday morning.*

Q. Now, will you swear that you did not say to me, in the presence of another person sitting in the same room, that you had put a value of \$10,000, during the time that you were corresponding with Mr. Lines, upon the memoranda and the letter mentioned in that correspondence?—A. I believe I said so to you, and I consider that if the memoranda was worth anything it was worth that to a party——

Q. Why did you come to Judge Shellabarger's office before you reported to the Sergeant-at-Arms?—A. I supposed from that telegram that La Abra Company caused my being summoned here.

Q. Did you not have at that time a letter in your pocket dated December 28, 1888, from the consul-general of Mexico at San Francisco, informing you that your presence was required here as a witness?—A. *I did.*

Q. Did not you show that letter to Mr. Kennedy in the conversation that took place at Judge Shellabarger's office?—A. In your office?

Q. Well, it was my office; put it that way.—A. Judge Shellabarger referred me to you. I supposed from the nature of the telegram that it was——

Q. The question is, did not you show to Mr. Kennedy in his office the letter now in evidence addressed by the consul-general of Mexico at San Francisco to you, dated December 28, 1888, informing you substantially that your presence would be required here as a witness in this La Abra investigation?—A. I presume I did.

Following is the letter from the Mexican consul-general at San Francisco, which, it will be observed, is dated about three weeks earlier than the subcommittee's subpoena (*ibid.*, p. 573):

[Correspondencia Particular Del Consul-General De Mexico. Alejandro K. Coney, 604 Clay street, San Francisco, Cal.]

DECEMBER 28, 1888.

DEAR SIR: It being necessary, in the interest of justice, that your testimony be heard by the committee of Congress in the matter of the "Abra" claim, your expenses to Washington and back will be paid, as also during your stay at the capital. Will you kindly answer at your earliest convenience, and oblige,

Yours very truly,

A. K. CONEY.

Mr. A. B. ELDER,
Santa Clara.

Some light is thrown upon Elder's motives and expectations in the subjoined passage from his cross-examination (*ibid.*, pp. 624, 625):

The CHAIRMAN. Well, proceed, Mr. Kennedy, if you please, to lay your predicate.

By Mr. KENNEDY:

Q. I want to ask you, if you please, Mr. Elder, whether on or about the 19th day of January——

Mr. FOSTER. The present month.

By Mr. KENNEDY:

Q. Whether on or about the 19th day of January, 1889, while you were crossing the bay in California on a ferry-boat you met a man by the name of Alexander S. Gillespie, or any man at all, to whom you said that you had been subpoenaed to Washington City to testify in reference to some old claim between American capitalists and the Mexican Government; that you were an assayer of minerals, etc.; that the claim was about some mines in Mexico; and whether you further stated that the

Mexican Government had promised you \$50,000 if you would give evidence favorable to them. Also, whether you said that unless the other party gave you more money you would likely give the kind of evidence required?—A. I met a man on the ferry and we were talking. He said he was a blacksmith; said he had been here, and I told him. He asked me which way I was traveling, and he had been to San José hunting a job as a blacksmith. I told him I was coming to Washington, and I said I had been summoned there by telegraph of the Sergeant-at-Arms of the United States Senate in an award claim of some citizens of the United States against the Mexican Government. He remarked, "Is there much money depending?" I said, "Yes, I think there is nearly \$1,000,000." "Well," he says, "they ought to pay you well to go on such a trip as that." Now, as to my saying that the Mexican Government had offered me \$50,000, that I never said. There was talk that they *ought* to pay me for a trip of that kind. I said, "*I presume they will pay me.*" I don't know, but the Sergeant-at-Arms says I will get 5 cents a mile. It will be almost like riding on the boom to get there and back." I says, "If anybody gives me anything *it will be voluntarily.*" I says, "I can not demand anything for my evidence." What I know is simply what I knew at the mill, and the thought of getting any stipulated amount has never entered my head.

Q. Did you say anything about the other party?—A. La Abra?

Q. The company?—A. Not a word that I recollect of; not one word.

The letter referred to in the foregoing extract had been received by Mr. Sherman, chairman of the Committee on Foreign Relations, and handed to Mr. Morgan, chairman of the subcommittee. The letter is herewith appended, with the agreement of counsel in regard to it (*ibid.*, pp. 687, 688):

The CHAIRMAN. It is agreed by counsel that if Alex. S. Gillespie were present and under oath, he would make the statement in regard to the conversation with A. B. Elder, which is contained in the following letter, and the presence of Gillespie is by agreement dispensed with.

The letter is as follows:

OAKLAND, CAL., January 19, 1889.

To the honorable Chairman Committee on Foreign Relations, Washington, D. C.:

To-day while crossing the bay here on ferry-boat I met a man who said he had been subpoenaed to Washington City to testify in reference to some old claim between American capitalists and the Mexican Government; that he was an assayer of minerals, etc., and the claim was about some mines in Mexico; and stated further that the Mexican Government had promised him \$50,000 if he would give evidence favorable to them; he also said that unless the other party gave him more money that he would likely give the kind of evidence required. He lives at San José, Cal., and will be in Washington about January 26. He is paying his own expenses to Washington for the present, and expects to have a private interview with Señor Romero, the Mexican minister, as soon as he arrives in Washington. Perhaps this may be of service to your committee, as he said both sides subpoenaed him.

Hon. G. R. Tingle (chief seal island agent, Alaska), at present in Washington, D. C., knows me and you can refer to him about trustworthiness.

Respectfully,

ALEX. S. GILLESPIE,
752 Brush street, Oakland, Cal.

Dahlgren's examination.

In availing itself of the opportunity afforded by the Senate to show that La Abra award should be reopened, the Mexican Government called but one of the witnesses whose depositions had been filed with the joint commission. This was Captain Charles B. Dahlgren, whose deposition on behalf of the company had been taken at Mazatlan before United States Consul Sisson on the 18th of September, 1872. Five years afterwards—in November, 1877—Captain Dahlgren was put into communication with Mr. Robert B. Lines by Mr. Alfred A. Green, who, it will be remembered, had been sent to Mexico by General Slaughter, under his contract with the Mexican Government, "for the purpose of securing testimony in proof of the fraudulent character of said claim." Green met Dahlgren in San Francisco, and made a statement to him,

some account of which will be found in Dahlgren's testimony before the subcommittee (*ibid* pp. 712-715). After his interview with Green, Dahlgren wrote the following letter, which has been printed as part of the "new evidence offered by Mexico" (Ex. Doc. 103, p. 285), and may be found in the appendix, p. 644:

SAN FRANCISCO, CAL'A, Nov. 12, 1877.

Mr. ROBERT LYONS,
U. S. Senate P. O., Washington:

SIR: I have good reasons for knowing that the testimony under my signature, as offered by A. W. Adams in the La Abra case or claim, has been perverted, and is therefore fraudulent, *and* should be treated as such.

My testimony was taken in rough notes *and* left for him to copy or fill in over my signature on a clean sheet, as I was called off on important business.

I know now that said testimony has been perverted *and* by said A. W. Adams.

Very truly,

C. B. DAHLGREN.

My address here is: Capt. C. B. Dahlgren, Pacific Refining *and* Bullion Exchange, cor. Brannan 7th, S. F.

P. S. I understand said A. W. Adams boasted he had obtained my signature by the use of a "good round sum of gold." Advise me how I can bring him before a court to substantiate said statement.

C. B. D.

I refer to Gen. Sherman and Rev. B'y'n Sunderland.

Dahlgren's interview with Green and his opinion of him appear in his testimony before the subcommittee as follows (*ibid*, pp. 644, 645):

The WITNESS. I was informed that I had testified in the Abra case, and that my testimony had been purchased for a "good round sum of gold."

By the CHAIRMAN:

Q. Who was your informant?—A. A. A. Green.

Q. Where does he live?—A. He is living a great deal in the Republic of Mexico.

Q. Was he your acquaintance?—A. He was an acquaintance of mine; yes, sir.

Q. A man whose opinion you respected?—A. I knew nothing against him. He had been the original owner of the Candalaria mine, of which I had been the superintendent, and therefore I had been brought into business contact with him.

Q. In consequence of that information what did you do?—A. He then told me *what my testimony had been*, and asked me if that was the case. I was very angry, and I then put myself into communication with Mr. Lines and wrote that letter to him.

At that time, Green was in the employment of General Slaughter under his contract with the Mexican Government. Green had probably examined Dahlgren's deposition in Washington; at all events, he pretended to be familiar with its contents, and undertook to tell Dahlgren what his "testimony had been." There is no evidence that Green stated the contents of Dahlgren's deposition to him correctly, or that Adams had ever said he had obtained the deposition from Dahlgren by bribery. There is not the least likelihood that Adams ever made such a statement, or would have made it, even if it had been true, for the award in favor of La Abra Company had been rendered only recently, and Adams was largely interested in it, and aware of the opposition to its payment by the Mexican Government, and he would, therefore, have been the last man to say anything reflecting upon its integrity. But, of course, Green's representations were calculated, as they were doubtless intended, to make Dahlgren angry and eager to prevent his deposition from being of any further service to Adams or the Company.

The measures he would be likely to pursue when in such a frame of mind can be imagined from his conduct as disclosed in the course of his examination before the subcommittee. It will be remembered that Green as well as Dahlgren had a grudge against Adams, and that

Green had besides a pecuniary interest under his agreement with Slaughter in making Dahlgren hostile to the company and the award.

Great importance is given to Dahlgren's testimony before the subcommittee by the fact, already mentioned, that he was the only witness produced before the subcommittee by the Mexican Government of all the witnesses whose depositions were filed with the joint commission; also by the fact that it was on his letter of November 12, 1877 (*supra*), that the Mexican Government based its charge that testimony had been "forged" by Adams in favor of the company's claim; and this importance is enhanced when it is remembered that Dahlgren's examination may fairly be regarded as showing the best that could be done in the way of impeaching the award if the question of its validity should ever be submitted to the Court of Claims as proposed by Mr. Morgan's bill. In this view it is considered proper to examine Dahlgren's testimony before the subcommittee at considerable length.

A critical examination of Dahlgren's letter shows that when it was written—more than five years after his deposition was taken at the United States consulate at Mazatlan—he had forgotten at what length he had been examined, and supposed that a single sheet would have contained his deposition. "My testimony," he says in his letter, "was taken in *rough notes*, and left for him to copy or fill in, over my signature, on a *clean sheet*." The original deposition on file in the Department of State contains eight sheets, written on both sides, and signed by Dahlgren near the middle of the sixteenth page. He admits his signature to be genuine, and his testimony shows that his answers to Adams's questions (which answers were not written out by Adams but by Peña) were quite voluminous. These questions and answers which Dahlgren in his letter calls "*rough notes*," were, he says, corrected by him—interlined and crossed out to such an extent as to make them unfit for use as a deposition. A fair copy was therefore necessary, and Dahlgren's testimony shows that there was abundance of time for making it, for he testifies that he went to the consul's office "early in the morning," and was there on that business until 1, 2, or 3 o'clock in the afternoon. (*Ibid.*, p. 650.)

The idea that a man of his intelligence, holding the position of superintendent of the Durango Mining Company and consul of the United States, should leave his "testimony" to be "filled in," *over his signature*, "on a clean sheet," in support of a claim for such a large sum against the Government to which he was accredited in his consular capacity, seems preposterous, and if anybody but himself had made such a charge against him it would have seemed too improbable for belief. All the presumptions would have been against it. This is how it seems to have struck Mr. Lines, for when he was asked in his cross-examination whether he had advised Dahlgren, as requested in his letter, how Adams could be brought before a court to substantiate his charge of bribery, he replied (*ibid.*, p. 927):

I regarded the statement in Dahlgren's letter as *a very extraordinary one*, and I thought perhaps an *improbable one*; that he had allowed his testimony to be taken in rough notes in that manner, and I thought that Mr. Dahlgren was much more concerned in the matter than the Mexican Government was, and for that reason I held no further communication with him at all, I believe, after sending him that telegram.

A careful examination of Dahlgren's testimony furnishes the strongest proofs of the falseness of his letter. Before he was examined in the subcommittee he had inspected his deposition in the State Department, where it is filed with the other records of the Joint Commission,

and he had seen that the original draft or "rough notes" could not have been copied or filled in "on a clean sheet." So when he came before the subcommittee he testified that his deposition "filled up a number of sheets, and when the chairman asked how many, replied: 'Oh, quite a number; there may have been *a dozen or two dozen sheets*, a large number of sheets;'" and he continued (*ibid.*, p. 647):

I then said: "General Adams, allow me to read over those papers." He said: "They are your answers *as written down by my secretary*, and it is long; it is not necessary; have you no confidence in me?" I said: "I wish to see those papers, and unless I do they can not go out of this room; I must see them."

Dahlgren seemed to have forgotten that the "papers" were of no use to Adams, because, at that time, they were neither signed nor sworn to. Dahlgren continues:

He then handed me the sheets, and I read them over. I then said: "General Adams, those are not the answers as I gave them to you, sir, and I will not allow that to pass for evidence." "Well," he said, "scratch it out or erase it, as you see fit." That was done, and then I said: "Now, those answers are satisfactory to me, and I will sign them," and *I did sign them*. He then said: "That is not fit to hand in as testimony, all scarred up in that manner." I said: "*You had no business to write those answers in that way.*"

The witness seemed to have forgotten that his answers had not been taken down by Adams, but by Peña. Dahlgren continued:

And I said, "Well, I am on the way to San Dimas, and I haven't time to stay longer." I then called to Mr. Sisson, who was consul to Mazatlan while I was United States consul at Durango—

By Mr. FOSTER:

Q. At that time?—A. At that time; yes, sir. I said to Sisson, "I will sign *a blank sheet of paper* and put it in your possession as consul, as between two consuls; you are to transcribe these notes and retain the original, and hand that signature with the transcribed sheets ahead of it to General Adams as my testimony." Sisson said he would do it. I then jumped on my mule and rode away, 170 miles back to San Dimas.

It will be observed that Dahlgren said that he signed the original deposition or "rough notes" after his corrections had been made, and, in addition, signed a blank sheet to be attached to the new copy which was to be made by Consul Sisson. Next day, his direct examination still continuing, the chairman inquired (*ibid.*, p. 677):

Q. Did you affix your signature at all after that single blank sheet of paper; *did you sign your name twice?*—A. No, sir; I don't think I did, *because it was in such bad shape that I would not.*

Dahlgren did not seem to be able to state the same circumstance twice in the same way. He was greatly troubled about his oath—a difficulty which he evidently had not anticipated. When asked whether he was sworn (*ibid.*, p. 647), he said, "I do not recollect, sir; I do not recollect whether there was any formality in swearing me or not." Asked again after a considerable interval (*ibid.*, p. 650), whether he had any clearer recollection than he had already stated as to whether he was sworn by the consul, he replied, "I don't recollect as to that." But in certain small particulars, not affecting the sense of his deposition, his memory was most wonderful. He seemed inclined to deny that he had said anything contained in his deposition—the mere fact that it was there seemed to arouse his antagonism. For example, his deposition made him say, "The late Rear-Admiral John A. Dahlgren was my father." In his testimony before the subcommittee (*ibid.*, p. 651), he said, "I never said that. To the question, 'Are you or are you not a son of the late Admiral Dahlgren, of the United States Navy,' my reply was, '*I am.*'"

An examination of the question in the deposition shows that his consular position as well as his parentage was inquired into, and while it might have been properly answered by the words, "I am," instead of the answer contained in the deposition, namely, "Yes; the late Rear-Admiral John A. Dahlgren was my father, and I hold the position suggested in the question, and I am so recognized by said authorities," the two answers mean exactly the same; and it is remarkable that after the lapse of seventeen years Dahlgren could have been so positive that he made the one answer rather than the other.

Recurring again to the question whether he was sworn, Dahlgren said (*ibid.*, p. 677):

A. I recollect when I wrote my name. I have seen the document and recognize my name. I handed it to Sisson. I said, "Consul Sisson, I put this in your charge, to have this transcribed and written—the rough notes;" supposing of course, as a colleague of mine, as one consul for another, that he would act for me. I had just received information that imperatively called me away. It was absolutely necessary to go. I could not delay. It was not my business to tell them that (he had testified previously that he did tell them that). *When I took this to him* he said, "You swear that this is the truth, the whole truth, and nothing but the truth?" I said, "I do."

By Mr. KENNEDY:

Q. Alluding to the blank sheet of paper?—A. Alluding to the testimony I had given.

Q. And you signed a blank sheet of paper and handed it to him?—A. That is it.

* * * * *

The CHAIRMAN. I will have to take this myself.

Q. You *now* state that you were sworn?—A. Yes; that I was sworn *at first*.

Q. *No; you state that you were sworn.* When the consul that administered that oath to you did so, did he have in his hand or did you have in your hand a paper to which that oath applied?—A. No, sir.

In his cross-examination the same subject was revived. (*Ibid.*, pp. 706, 707.)

By Mr. WILSON:

Q. Were you sworn on that examination?

By the CHAIRMAN:

Q. Was an oath administered to you?—A. No; that was administered to me *at the beginning*.

Q. Well, was there at the end?—A. I have stated in my examination that when I signed that paper and handed it to Sisson he said, "Is this the truth, the whole truth, and nothing but the truth?" *holding that blank piece of paper in his hand which I had requested him to transcribe.*

* * * * *

I was not sworn *until the examination was over*, and I handed to him that blank sheet of paper, then he said, "Is this the truth, the whole truth, and nothing but the truth?"

Q. And that is your statement now in regard to it?—A. That is. That is my statement. That is the only swearing that was done in the matter.

Before Dahlgren's testimony is further examined, it may be as well to refer to the testimony of ex Consul Sisson in regard to the manner in which Dahlgren's deposition was taken. Sisson, who was subpoenaed on behalf of the company, testified before the committee, on that matter, as follows (*ibid.*, pp. 792, 793):

By Mr. KENNEDY:

Q. Have you examined the original deposition of Dahlgren that is now on file in the Department of State?—A. Yes, sir.

Q. When did you first see that document?—A. When did I first see it?

Q. Yes; I mean the 18 pages of which it is now composed?—A. It was made out in my consulate.

Q. Now, will you state the circumstances attending the taking of that deposition? I mean the signing of it by Dahlgren, his oath to its truth so far as you are con-

cerned.—A. Well, Mr. Dahlgren and Mr. Adams, Mr. Peña and I think Governor Galan, came up to the consulate for the purpose of making out an affidavit.

By the CHAIRMAN :

Q. Now, do you mean an affidavit, Mr. Sisson, or a deposition?—A. I do not mean an affidavit, I mean a deposition.

Q. In this La Abra case?—A. In this La Abra case. And they sat down in the office there and went to writing.

Q. You say they went to writing. Who went to writing?—A. Mr. Peña did the writing; the interpreter. Adams and Dahlgren were discussing the matter.

By Mr. KENNEDY :

Q. What time of day did these gentlemen whom you have named come to the consulate?—A. Oh, along in the morning sometime. I can not tell exactly what hour they did come.

Q. Well, now, proceed.—A. Well, Mr. Peña went to draw up the paper and they talked it over. I was out and in the room while they were at it, and finally *it was finished and all written out*. I went in there then and *swore Mr. Dahlgren*, and *it was read over to him*.

Q. You mean this identical deposition?—A. I mean *this identical deposition* that is in the State Department to-day, or was yesterday.

By the CHAIRMAN :

Q. You examined it through, did you?—A. I did. I swore him—the usual form of oath that was attached there to it—and after it was all through he signed it right there. Mr. Peña witnessed it right there. Then I put my oath to it.

By Mr. KENNEDY :

Q. That is, the certificate?—A. I mean my certificate. Then I signed it and put the seal of office to that. Then I turned it over to *Mr. Danglado*, who put the ribbons through it in the form you see. You see how it is done there, put through and through, brought back, sealing-waxed about the top of it, and he held it up while I put the stamp on that sealing-wax. Mr. Dahlgren, as soon as he signed it, went off.

After reading to Sisson, from the record, Dahlgren's testimony, already quoted, that he had signed a blank sheet of paper, etc., the ex-consul's examination was continued as follows (*ibid.*, p. 794) :

Q. Now, Mr. Sisson, what have you to say to that statement of Dahlgren so far as it concerns you?—A. I can say that *he signed no blank sheet at all* there to my knowledge. *What he signed was this deposition of his*. What he and Adams did and talked about—they talked a great deal—I can not tell, but *this was the result of their work*, was the making his deposition there.

Q. Now I read again to you :

By the CHAIRMAN :

Q. There is one part of that you have not answered. He states there that he makes some declarations to you. What do you say about this?

By Mr. KENNEDY :

Q. I will read that again to him :

“I will sign a blank sheet of paper and put it in your possession as consul, as between two consuls; you are to transcribe these notes and retain the original, and hand that signature with the transcribed sheets ahead of it to General Adams as my testimony.” Sisson said he would do it.”

Now, you have just said that Dahlgren never signed any blank sheet of paper in your consulate to your knowledge, and the chairman invites your attention to what Dahlgren says he said to you about transcribing the notes and your promise to do that. Is that true?—A. No, sir; I don't recollect any such thing.

By the CHAIRMAN :

Q. No, but do you deny it?—A. *I do deny it*; yes, sir.

Q. You say it is not true?—A. *I do*.

* * * * *

No affidavit was ever taken there unless it was written out in full as a deposition.

By the CHAIRMAN (*ibid.*, p. 795) :

Q. Is that your reason for saying that Dahlgren has made a false statement, that you never do business in that way, or do you state it as your recollection in connection with this particular paper?—A. *I state that as a recollection*.

Q. In connection with this particular paper?—A. *Yes*.

Q. That he did not sign a blank sheet at all, but *signed the deposition after it had been filled out, and only after it had been filled out?*—A. *That is what I say.*

* * * * *

By the CHAIRMAN:

Q. Wait one moment; I wish to ask him a question. This document that you saw in the State Department was drawn up, you say, in Peña's handwriting?—A. Yes.

Q. Was that read over to Dahlgren in your presence?—A. Yes.

Q. Who read it to him?—A. Peña, I think, and I think I read some of it myself.

* * * * *

By Mr. KENNEDY (*ibid.*, p. 799):

Q. You say that every word of the deposition that is now in the State Department was read to the witness in your presence before he signed it?—A. That is what I intend to say.

The consular clerk corroborates Sisson.

It will have been noticed that Sisson said that Dahlgren's deposition immediately after he signed it had been turned over to Mr. Danglada, who put the ribbons through it and held it up while the consul put the stamp on the sealing-wax. Sisson had previously testified that his consular clerk was Domingo Danglada, a Mexican, who spoke Spanish, English, and French. After Dahlgren had been examined by the subcommittee, counsel for the company made inquiries in San Francisco for Peña—the man who read Dahlgren's deposition to him and subscribed it as witness—in order to have him subpoenaed, but found that he was dead. It was discovered, however, that Danglada was still living at Mazatlan, and when the company's counsel requested that he should be subpoenaed (agreeing to bring him to the boundary line between the two countries), the following telegraphic correspondence was admitted in evidence by consent in lieu of his personal appearance (*Ibid.*, p. 938):

Mr. FOSTER. Before you adjourn we will answer the opposition that we reluctantly, and in order to avoid any excuse for further delay in this investigation, will admit that Danglada, if present, would swear to this statement contained in the telegram.

The CHAIRMAN. I will read it. Shellabarger & Wilson, counsel of La Abra Silver Mining Company, sent a dispatch addressed to Domingo Danglada, at Mazatlan, Mexico, dated February 21, 1889, at Washington, D. C., as follows:

"Dahlgren swears he did not sign his deposition taken September, 1872, before Sisson, about La Abra claim, but signed a blank sheet of paper. Sisson swears that Dahlgren signed said deposition when fully written out, and that it was read to Dahlgren by Peña in your presence, and you tied it up. Which is the truth? Wire at our expense.

"SHELLABARGER & WILSON.

"Via Galveston, February 23, 1889, dated Mazatlan, 23.

"SHELLABARGER, R. J. WILSON, Wash'n, D. C.:

"Sisson is correct. Dahlgren signed deposition when fully written out.

"D. DANGLADA."

It is admitted by the counsel for Mexico that if D. Danglada were here he would swear that he received the telegram above copied and made the answer above copied and would swear that—

"Sisson is correct. Dahlgren signed deposition when fully written out."

Dahlgren's disposition to repudiate everything in his deposition has already been noticed. Although he had sworn that the original draught or "rough notes" comprised "a dozen or two dozen sheets" and that the examination was prolonged and tedious, he scarcely left enough of his deposition in his testimony before the subcommittee to fill a single sheet. He tried to dispute even the most trivial things in his deposition. One illustration of this has already been given; another is fur-

nished below which also shows his shiftiness, his readiness to swear to two conflicting facts (*ibid.*, p. 704):

Q. You have testified as one of the evidences that this is not your deposition—
A. Yes.

Q. Hold on a minute now—that you did not say your family was going to *New York* as recorded in this deposition; that you said your family was going to San Francisco. Now, I want you to say whether, in the light of what you have just stated, you can swear that you did not say that your family was going to New York as it is recorded in this deposition?—A. I have told you that I did not attach any importance. I said they were going to San Francisco. I did not say where else they were going.

Q. I beg your pardon— A. Well, that is what I say now.

Q. Well, I am not talking about what you are saying.—A. It is an immaterial question.

By the CHAIRMAN:

Q. No, it is not immaterial. It is what you said then. Did you say to that man who took down your deposition that your family were going to New York or going to San Francisco?—A. Well, after an interval of eighteen years, about, *I don't know what I did say*, only that I was going to send them to San Francisco first.

The CHAIRMAN. Well, that ought to be satisfactory.

By Mr. WILSON:

Q. No; one moment further. You have sworn here before the committee, and pointed out as one of the evidences that this deposition is not correct, that they recorded it here that you said that your family was going to New York.—A. Well, I did say San Francisco to General Adams.

Q. Now you swear to that?—A. Yes; *I swear to that now*.

Being asked how he happened to sign that sheet of paper half-way up, he said (*ibid.*, p. 700):

I do not know that.

Q. Why not at the bottom as well as half-way up the sheet?—A. *That never occurred to me.*

But a reason occurring to him just then why it might be prudent to sign a blank sheet for such a purpose near the middle he continued as follows, without a break:

I signed it right there in the middle of the sheet or wherever it is. I do not think I have seen that paper since I put my name on it. *I will tell why I did that.* I did so thinking that upon this they could put in the certificate of the consul. I knew that something was to be added to it, and signed it up so as to give them room.

He testified in his original deposition that in 1871 he removed certain parts of machinery, which the company had abandoned at Tayoltita, to San Dimas, and used them in the mill belonging to the Durango Company, of which he was superintendent; and in his deposition he claimed to have done this with the sanction of the court (*ibid.*, pp. 402, 403). In his testimony before the subcommittee (*ibid.*, p. 685) he said that the judge declined to give him permission to take these pieces, and that Granger told him (*ibid.*, p. 689) that if the judge would not allow him to take the machinery it would be all right—he (Granger) would allow him, and under that promise he (Dahlgren) took the machinery.

Further examined in regard to this appropriation of property that did not belong to him, he testified (*ibid.*, p. 709):

Q. You had taken a part of this La Abra Company property from that place?—A. Yes, I had.

Q. Will you tell us the property you took away?—A. I took a water-wheel 24 feet in diameter and, I think, 6 feet breast.

Q. What else did you take away?—A. I took some retorts.

Q. How many?—A. Two.

Q. What else did you take away?—A. I took all such machinery as I needed. I can not recollect the pieces, but I took everything I needed to complete my mill at San Dimas.

Q. In other words, you dismantled this mill for the purpose of building up your own?—
A. I did.

Q. From whom did you buy that?—A. Santiago Granger.

He was further examined on this transaction (*ibid.*, p. 733):

Q. From whom did you purchase this La Abra property that you took away from there?—A. I took it.

Q. Just went and took it?—A. I took it; yes.

Q. Did not buy it from anybody?—A. I paid no money for it, sir.

Q. By what authority did you take it?—A. I applied to Judge Quiros for permission to take it, and he denied me, and Granger said: "If he does deny you, I will allow you to go over and take it;" and I did go over and take it, and that is what I did.

Q. You just went there and carried away property that did not belong to you?—A. No, sir, I had permission from Granger to do it.

Q. Where was Granger at the time?—A. In my employ as book-keeper.

At this juncture, for some reason, Dahlgren thought it was important to conceal the fact that Granger had been in the employment of the Durango Company at San Dimas prior to Dahlgren's arrival at that place. It had been developed that Dahlgren had been dealing with a man in his own employ for property which that man did not own, and that under a pretended permission from him, and without paying him or anybody anything for it, and notwithstanding the refusal of the judge to sanction his proceeding, Dahlgren had plundered the works. Granger claimed that he had been left in charge of the property by Exall in March, 1868, but he had left Tayoltita and entered the employ of Ralph Martin, Dahlgren's predecessor at San Dimas, as book-keeper. But Dahlgren did not want it to appear that when he arrived at San Dimas in July, 1870, Granger was already book-keeper for the Durango Company. And in his cross-examination, having forgotten what he had previously said on this point, he dodged and prevaricated as follows:

By Mr. WILSON:

Q. You found him at San Dimas when you went there?—A. Yes.

Q. And do you know in whose employ he was when you went there?—A. I only know from hearsay.

Q. Well, was he in the employ of your company?—A. I do not know.

Q. Was he at work in the office of your company?—A. I could not tell that.

Q. When you went there?—A. When I went there I found him there.

Q. What was he doing?—A. I do not know.

Q. Was he keeping the books of the Durango Company?—A. No, sir; not that I know.

Q. Well, what was he doing?—A. I told you I did not know.

Q. Well, how soon did you take him into your employ? You found him there?—
A. Immediately upon my arrival.

Q. Did you change his employment in any way?—A. No, sir; I did not. It was over three months after I was there that I took him in my employ.

Q. Well, he was there working for the Durango Company, was not he?—A. I do not know.

Q. Who was keeping the books of the company when you went there?—A. I could not say that; I did not know.

Q. Well, who kept the books of the company during the first three months after you went there?—A. Ralph Martin. I was there three months with my predecessor before he left.

Q. And Ralph Martin was your predecessor?—A. Yes.

Q. And who kept the books for Ralph Martin?—A. He kept his own books, and I kept my own books. We started in to wind up the business. It took him three months to wind up, and I started in with my own expenditures.

Q. Well, I want to know whether Granger was doing anything for that company when he went there?—A. I do not know, I tell you most distinctly.

Q. Did you see him there?—A. I did see him there.

Q. Was he about the hacienda all the time?—A. No, sir.

Q. Where was he?—A. Sometimes in town; sometimes in Tayoltita. When he was out of the hacienda I did not know where he was.

Q. But after you had been there three months you put him in as book-keeper?—A. Yes; I took him in.

Q. And after he had been in your employ about a year, when Quiros had refused you the right to take that property, you got your authority from your employé, Granger, and you went over and carried it away?—A. Yes.

Q. And that is the way you got possession of it?—A. Yes.

Now, it will scarcely be credited after reading the foregoing that the following is to be found in Dahlgren's direct examination (*ibid.*, 679):

When did you first become acquainted with James Granger?—A. When I first reached San Dimas in July, 1870.

Q. What was Granger's occupation at that time?—A. *He had been book-keeper for my predecessor, Ralph Martin, and I retained him in that position during the five years and two months that I was there.*

A more complete contradiction of all his prevarications on that point could scarcely be put into a shorter sentence.

In his motion before the umpire for a new hearing, Señor Avila, the Mexican agent in attendance upon the Joint Commission, alluded to Dahlgren's conduct, as disclosed in his deposition, in stripping the mill at Tayoltita, as follows (Ex. Doc. No. 103, H. R., 48th Cong., 1st sess. p. 94):

Deponent says that in the enterprise of which he is superintendent, the only American one that has escaped the fury of the Mexican authorities, he availed himself of the opportunity by purchasing a part of the property at mere nominal prices from private individuals, in the acquisition of which he was sustained by the judge of the first instance of San Dimas, according to a contract.

Here, then, we have the son of an admiral and (himself) consul taking advantage of robberies, but sustaining the claim to which robbers serve as a cover. If a person who acts in this manner is a reputable witness, the undersigned must then candidly confess that he does not understand the meaning of the word.

What Señor Avila would have said of Dahlgren's conduct if, instead of claiming, as he did in his deposition, that he was authorized by the court to take the machinery, he had testified, as he did before the subcommittee, that he took it notwithstanding the refusal of the court to grant him permission, can readily be imagined.

Before the subcommittee, Dahlgren denied that he had said in his deposition, in answer to the question how his company could remain at San Dimas without disturbance, that they had had disturbances, and difficulties, and had been obliged to submit to all exactions, whether lawful or unlawful, but had found out how to manage and *interest them*, otherwise they would have been compelled to leave like the others without a doubt. That Dahlgren did make such a statement in his deposition and that it was true is made probable by the testimony of his predecessor as superintendent of the company's mines at San Dimas, Ralph Martin, an unimpeached witness, whose deposition on behalf of the company was taken in New York before United States Commissioner Stilwell in June, 1874. On this point Mr. Martin said (Appendix, p. 470):

There was, in reality, no protection given to foreigners in the country, and I never knew any effort to be made by the authorities there to extend protection to *Americans who were at variance with Mexicans*, excepting only in cases where the profits of the mining enterprise were shared by said authorities.

Many more instances of Dahlgren's untrustworthiness could be cited from his testimony before the subcommittee, but another must suffice. It was claimed by counsel for the Mexican Government that certain statements contained in Dahlgren's deposition could not have been made by him, because the facts stated were not within his knowledge; for example, that when he was examined at Mazatlan, on the 18th of September, 1872, he did not know the names of the company's mines, and therefore could not have mentioned them. When Mr. Foster was ex-

amining Dahlgren upon the questions and answers in his deposition seriatim, his attention was drawn to the fourth question and answer, reading as follows (*Ibid.*, p. 651):

Question 4th. Where are said mines and property situated; and of what did said improvements of claimant consist, and in what condition are they now?

Ans. The principal mines of "La Abra Silver Mining Company" are in "La Abra" Mountain, near Tayoltita, in said district of San Dimas. Their names are "El Rosario," "El Cristo," "La Abra," "La Talpa," "El Arrayan," "El Sauce," and some others in that district whose names I have forgotten.

Then his examination was thus continued:

Q. Is that a correct answer to the question as you gave it?—A. No, sir; *because I didn't know what mines they possessed.*

Q. Did you ever know, *by name*, the mines whose names are here given? Did you ever know whether or not they belonged to La Abra Company?—A. No, sir; I knew that La Abra mine belonged to the company. I had been at El Arrayan, but I didn't know the names of the rest of the mines belonging to the company.

Q. And you did not attempt to give the names in that examination?—A. No, sir; nor their condition.

But subsequently, in his reply to a question whether he had testified in his deposition "to anything as to the denouncement of the Rosario mine by Granger" (*ibid.*, p. 653), he replied: "*I believe I did.*" That made three of the company's mines whose names he knew prior to his examination at Mazatlan—"La Abra," "Arrayan," and "Rosario." Further on, his attention was again directed to the names and value of the company's mines, as stated in his deposition, "more particularly to "La Abra," "El Rosario," "La Talpa," and "El Cristo" veins, and to a remark of his in his said deposition that he "should like to own them, and if it were possible to raise capital to work them." Whereupon, forgetting that he had said a short time before that he did not know their names, he replied that *he could have owned them if he had wanted to*, and that he had the means to work them, and then to show how familiar he was with the company's mines, and in what a practical manner, he added (*ibid.*, p. 659):

Some people *repeatedly* asked me to go over there and *take hold of those mines*, but I always declined.

Q. Why did you decline?—A. Because I sent over my right-hand man to look over the district, and if there was anything good to secure it.

* * * * *

My rule always is to send out my right-hand man to look at a property first, and then if he reports favorably on it I go myself and look at it, and if it is good I take it.

But without this evidence that he had received a report on the company's mines there would be a strong probability supporting his deposition that he knew their names, and in a general way their location and characteristics; for during more than two years prior to his examination at Mazatlan he had been associated intimately with James Granger, who knew all about the mines, and General Adams had been his guest at San Dimas, and had there made examinations of witnesses preliminary to taking their depositions in court. And Dahlgren testified that he "heard the case talked of *pro* and *con* in his hacienda" (*ibid.*, p. 670):

We would sit there of an evening and talk of it.

He had been at San Dimas over two years, and his "right-hand man" had made a report on the company's mines before he made his deposition at Mazatlan in September, 1872.

Besides, in referring to his book on the "Historic Mines of Mexico,"

in which the company's mines "La Abra," "Rosario," "La Luz," and "El Christo," are mentioned, he said to the subcommittee (*ibid.*, p. 687):

I have always kept carefully a mining diary, and as I got information about mines I placed it down, tabulated it, and kept it. During the five years I was in Mexico I did that, and finally I got such a mass of data I put it into shape.

It is also to be remarked that in speaking of his frequent visits to the company's hacienda in October, November, and December of 1871, when he was helping himself to the machinery, he said (*ibid.*, p. 685) that nobody at that time was occupying the company's mines. In the earlier part of his examination before the subcommittee (*ibid.*, top of p. 652) he said that he did not know "anything whatever of the mines that La Abra Company abandoned"—alluding to the time when he made his deposition at Mazatlan—but it afterwards appeared, as already observed, from a memorandum in his note-book that two months before he was examined at Mazatlan he had made a personal examination of "El Arayan." It also appeared that he knew his book-keeper had denounced "El Rosario," and that he (Dahlgren) was intimate with Francisco Torres (*ibid.*, p. 686), who worked that mine and "La Luz" in partnership with Granger in 1870 or 1871.

The testimony of ex-Consul Sisson or Domingo Danglada was not necessary to prove that Dahlgren committed perjury in maintaining, as he did before the subcommittee, the truth of his letter to Lines in regard to the manner in which his deposition was taken at Mazatlan. It does not appear that his deposition could ever have been of much importance in the case, so far as the award was concerned, for he did not arrive at San Dimas until July, 1870, more than two years after La Abra Company had abandoned its property, and the great bulk of his deposition was hearsay. It is true that he vouched again and again in the strongest terms for the honesty, intelligence, courage, and truthfulness of his Mexican "mozo," Avalos, whose three depositions, two taken on behalf of the company, and one alleged to have been taken by a Mexican judge in court on behalf of the Mexican Government, are printed in the appendix, and have been already noticed in this report. But Dahlgren's deposition takes its chief importance from the fact that he denied having made it in the form in which it was submitted to the Joint Commission, and that his denial, coupled with his aspersion upon General Adams, was made so prominent in the so-called "new evidence offered by Mexico" so early in the efforts of that Government, through General Slaughter and his subagents, to impeach the award.

The testimony of ex-Consul Sisson and of Domingo Danglada, with Dahlgren's own contradictions and inconsistencies, have destroyed his credibility and relieved General Adams and the company from any discredit or stigma cast upon them by Dahlgren's letter. That Dahlgren's letter was injurious to General Adams, and, reflexively, to the company, is beyond dispute; for in an earlier report by Mr. Edmunds for Mr. Morgan, from the Committee on Foreign Relations, (July 7, 1886), it is said that the evidence submitted by the Mexican Government in the document entitled "Claims against Mexico" shows "that some of the testimony offered by the company to establish its claim before the Commission was *forged* by its agent and attorney, Adams. The reference in that report is to Dahlgren's letter, which was printed therein with the following caption in italics: "*Letter from C. B. Dahlgren to Mr. Robert B. Lines, stating that his deposition in favor of La Abra Silver Mining Company has been forged.*" This charge will now have to be withdrawn

with the other charges falsely accusing General Adams of having been short in his accounts as captain and assistant commissary at the close of the Mexican War, and of having been thrice court-martialed (and, inferentially, disgraced) during his service in the United States Army in the war for the Union.

One of the most remarkable and satisfactory features of the recent investigation was the formal withdrawal of the charges against General Adams, affecting his military record, by one of the counsel for the Mexican Government (Mr. Lines) in the course of his cross-examination. The official documents showing the falsity of the charges reflecting on the personal integrity of General Adams were received in evidence and are printed, with the testimony of Mr. Lines on the subject, on pages 931-934 of the appendix.

It seems to the undersigned that the testimony taken before the subcommittee instead of impeaching the award has shown the strong foundations upon which it rests and has justified the wisdom and equity of the umpire.

The Mexican Government has shown by Colonel De Lagnel in this recent investigation how general and deep-seated were the suspicion and hatred of the United States and its citizens among the population in the vicinity of the mines when he was the company's superintendent in the year 1867; how "pernicious" and dangerous was the character of the local justice of the peace who had established himself on the company's property; on what slight occasion an armed "demonstration" was made against the superintendent and his American employes at the hacienda; how the same thing happened at San Dimas, and how unfounded is the theory of the minority report that events of importance which were not mentioned in the company's letter-press copy-book are not to be credited, although the superintendent testifies to them under oath. The Mexican Government in this recent investigation has shown by Francisco Torres that of all the ores abandoned by the company in March, 1868—from 10,000 to 14,000 cargass—only 500 or 600 cargass remained two or three years after the abandonment, and it need hardly be said that if the ore had been poor it would not have been carried away. The Mexican Government in this recent investigation has shown by Somero and Hermosillo that, in the estimation of one of the most experienced and competent miners in Mexico, La Abra mine is still so rich in undeveloped resources that during the last seven or eight years he has been engaged in tunneling the property—an extensive and systematic operation not yet completed—at a cost of from \$50,000 to \$60,000.

The Mexican Government in this recent investigation has shown by A. B. Elder that one of the most infamous charges it ever made against the company was utterly without foundation or color of excuse; and also that no protection was afforded by the local authorities to the witness himself when the richest of his ores were stolen at La Puerta in 1865, and that it would have been dangerous both for him and the local magistrate if the latter had attempted to enforce the law. The Mexican Government has also put itself under a cloud of suspicion by the testimony of the same witness, and of the "contractor," General James E. Slaughter, and of the detective, Fisher, in regard to the propriety and integrity of the methods it has pursued in its attempts to re-open the award. Instead of showing, as it set out to show in the recent investigation, that the award should be re-opened and the claim readjudicated on the merits, the Mexican Government has shown that the ancient maxim which the House committee, in Mr. Daniel's report, has applied

to this case should be so applied without further evasion or delay: *It is to the interest of the commonwealth that litigation should cease.*

Legal objections to the bill.

The bill (S. 2632) authorizes and directs the Attorney-General of the United States "to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award, or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein, or as to any part thereof, by fraud or false swearing, or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns;" and undertakes to confer jurisdiction upon the Court of Claims "to hear and determine such suit, and to make all interlocutory and final decrees therein as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court so far as the same are applicable." The bill also grants an appeal to either party from the Court of Claims to the Supreme Court of the United States, and undertakes to confer jurisdiction upon that court to decide such appeal.

It is provided in the fourth section of the bill "that in case it should be finally adjudged in said cause that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, was based upon or obtained through fraud or false swearing, or other false and fraudulent practices of said company, or its assigns, or by their procurement, the President of the United States is hereby authorized to release the Government of Mexico from the further payment thereof to the extent that the same is so declared fraudulent, and to return to said Government any money paid by the Government of Mexico on account of said award remaining in the custody of the United States that has not been heretofore distributed to said La Abra Silver Mining Company, or its successors and assigns, which such court shall decide that such persons are not entitled, in justice and equity, to receive out of said fund".

The fifth section of the bill declares that it shall not be lawful for the Secretary of State, during the pendency of said suit and until the same is decided, to make any further payments out of said fund on account of said award, and that in case said court shall decide in said suit that said La Abra Silver Mining Company, or its successors and assigns, are in justice and equity entitled to any part of said award that shall remain to be paid or distributed, the Secretary of State shall proceed to distribute the same to the persons entitled thereto.

Nature of the question which the bill proposes to submit to the Court of Claims.

Is the question which it is thus proposed to submit to the Court of Claims, and on appeal to the Supreme Court of the United States for decision, judicial and justiciable or political and diplomatic in its nature? The question simply stated is whether an award rendered under such a treaty as that of July 4, 1868, between Mexico and the United States,

by a Mixed Commission, should be opened on account of allegations of fraud in the procurement of the proofs upon which it was founded. Or, in other words, whether the United States, so far as this particular award is concerned, should in comity and justice release Mexico from its solemn engagement (in the language of the treaty) "to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every claim." What department under our form of government has the power to make a final answer to that question whether Mexico should be released from her engagement in this case or not? Is that power lodged in the Executive or the Judiciary; or can it be exercised by either? Perhaps an exact definition of the thing done and the authority exercised in rendering the award will be of assistance in answering the question. In rendering the award it was determined that the Mexican Government should pay to the Government of the United States, for the benefit of La Abra Company, a certain sum of money. This determination was not the act of either Government alone. The Commission was the creature of both Governments; the umpire was the chosen agent of both Governments acting through their respective Commissioners who chose him.

The particular thing that was ascertained and determined in the Abra award was ascertained and determined by the two Governments acting conjointly by virtue of and in accordance with the treaty. The judgment rendered—the coin issued from this international mint bears the stamp of both Republics. An award may be the fruit of a treaty, and it may be provided in that treaty that the award shall be final, and yet the award may not have an international character. The ascertainment of what amount is due to A or B may be made by a purely domestic agency, as in the cases of the Chinese claims under the treaty of 1858, or the Mexican claims that were decided under the treaty of February 2, 1848 (Guadalupe-Hidalgo), both of which treaties left the ascertainment and determination of the amount of the particular claims to the United States acting exclusively by its own agents. Article 15 of the afore-said treaty with Mexico contained the following provisions:

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever canceled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one quarter millions of dollars. To ascertain the validity and amount of those claims, a board of commissioners shall be established by the Government of the United States.

The award to Gardiner by the commission appointed under that treaty was a purely domestic act. The Government of the United States had a direct pecuniary interest in that award; the Mexican Government had none. It was not only the right of the Government of the United States, but a duty it owed to all its citizens, to refuse to pay that award on proof that it was obtained by corruption, and it was in the courts and the courts only that the Government could enforce its rights and obtain justice against the wrongdoer after the award was rendered. The wrongdoer was first indicted for perjury and then was made defendant in a civil suit to annul the award for fraud. It has been already observed that Mexico was not represented in the tribunal by which that award or the Atocha award was rendered, and that these awards were not stamped with the international character which distinguishes La Abra award. They were the work of a purely domestic agency, and founded entirely on *ex parte* proofs. No evidence whatever was taken in opposition to the claims. The report of the majority of the committee and the citation in that report from the views of counsel for the Mexican

Government overlook this vital distinction. Neither the committee nor counsel mention a single instance of the submission of an award of a mixed or international tribunal to a domestic court of either of the high contracting parties for review. An international award—an ascertainment and determination of a particular claim by a *mixed* commission—*can* be reviewed, but it can be reviewed only by the concurrent action of the two sovereign powers who were parties to it. The question whether such an award ought to be reviewed is a question for the two nations communicating with each other through their constitutional organs of communication; in other words, the question is diplomatic and not judicial.

This was the conclusion reached in June, 1880, by the Judiciary Committee of the Senate in reporting against the passage of a bill authorizing the Court of Claims to investigate this same La Abra case. The committee, consisting of Allen G. Thurman, chairman; Joseph E. McDonald, Thomas F. Bayard, A. H. Garland, L. Q. C. Lamar, David Davis, George F. Edmunds, Roscoe Conkling, and Matt. H. Carpenter, held (report No. 712, Sen., 46th Cong., 2d sess.)—

That this would involve an investigation by Congress of facts of an international character which, in the opinion of the committee, properly belong to the Executive Department, and which it was the intention of the fifth section of the act of June 18, 1878, to leave with the Department.

The bill under consideration proposes to withdraw these two claims from the dominion of international jurisdiction, and place them before a tribunal organized and existing solely by virtue of the laws of this country, and in this way it would seem designed to avoid the opening up of other questions of complaints that are known to exist on behalf of citizens of the United States, whose claims, for various causes, failed to receive favorable consideration by said commission under the treaty creating the commission.

The second article of that treaty bound the two Governments absolutely and conclusively by the final awards of the Commission and umpire in all cases coming within its provisions, and it would seem right that if it is to be set aside as to any of the claims, *it ought to be by a new convention* in which provision should be made to do justice to all claims.

The constitutional inability of Congress to make justiciable what is not justiciable, or to withdraw from the judiciary what is justiciable, is expressed by Mr. Justice Curtis in rendering the opinion of the Supreme Court of the United States in *Den vs. The Hoboken Land Improvement Company* (18 How., 285), as follows:

To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider Congress can either withdraw from judicial cognizance any matter which from its nature is the subject of a suit at the common law, or in equity or admiralty; nor, on the other hand, *can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination.*

This point will be found presented more at large, with the authorities, in some extracts from a brief of Messrs. Shellabarger & Wilson, of counsel for the company, which will be printed in an appendix to this report.

The bill would encroach on the power of the President to distribute the funds, and would revive in the courts a controversy that has been settled between the two nations.

It is assumed in the majority report that the President's power to lawfully withhold distribution of the funds received from Mexico in payment of these awards comes from Congress by virtue of the act of June 18, 1878, and that he has no authority to distribute these funds because of an alleged reservation of the control of their distribution on

the part of Congress indicated by the words, "until Congress shall otherwise direct," which are to be found in that act; and the majority report intimates that this view is supported by the decision of the Supreme Court in the case of *Frelinghuysen vs. The United States* (110 U. S., 63).

The question involved in that case was whether the President had any right to withhold the funds paid in by Mexico from any of the awardees—whether he had discretion in the premises or a merely ministerial duty to discharge. This was the only question before the court, but in deciding that question the court was obliged to consider certain other questions upon which the decision of that particular question depended. The act of June 18, 1878, was carefully considered by the court because it was relied upon by the counsel for the Government as a justification for the refusal of the Secretary of State to distribute the funds which he had received from the Government of Mexico on account of the Weil and La Abra awards.

Why legislation was necessary to carry the treaty of July 4, 1868, into effect.

It appears from a letter addressed by Mr. Evarts, while Secretary of State, on the 6th of November, 1877, to Mr. Swan, who was chairman of the Committee on Foreign Affairs of the House of Representatives, that no action on the part of Congress was considered necessary to authorize the President to distribute the funds that had been and were thereafter to be received from Mexico under the treaty of July 4, 1868. Such distribution, Mr. Evarts said, "*would be according to the practice of the Government,*" but some legislation was necessary to make good to the fund the amount with which the Government of the United States was charged, *i. e.*, the sum total of all the awards which had been rendered by the Mixed Commission in favor of citizens of Mexico against the United States, and which under the treaty had been deducted from the sum total of awards in favor of citizens of the United States against Mexico. So we find the act of June 18, 1878, appropriating the amount reserved by the Mexican Government, and also authorizing the Secretary of State to deduct from the payments received and to be received from Mexico a sum not to exceed 5 per cent. thereof until the aggregate of the amount so deducted should equal the sum of \$114,948.74, being the amount of the expenses of the Commission. Mexico having deducted and reserved the amount awarded to her own citizens from the sum total awarded against her in favor of our citizens (who thus, as it were, paid a debt due by their Government to the Government of Mexico), Congress proceeded to "make good to the fund" the amount so reserved, in order that there might be a sum sufficient in the hands of the Secretary of State, with the installments paid to him by the Mexican Government, to pay the amounts awarded to our citizens by the Joint Commission.

The act of June 18, 1878, construed by the Supreme Court of the United States.

It was a portion of the fifth section of the act that the court found it necessary to construe in the case of *Frelinghuysen vs. The United States* (supra). That portion reads as follows :

SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a

rehearing; therefore, be it enacted, that the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity, require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct.

There is nothing in the opinion of the court, as rendered by the late Chief-Justice Waite, to support the idea of the committee that the President takes his power either to distribute or to withhold distribution of the funds in question from Congress; but, on the contrary, the opinion holds that the President having under the Constitution the initiative in making treaties may, as the constitutional depository of such treaty-making power, inquire into such charges as those made by the Mexican Government in this case and into the propriety of opening such an award with a view of providing for a retrial of the claim by a treaty. "In our opinion," says the Chief-Justice, "it would have been just as competent for President Hayes to institute the same inquiry *without* this request as with it"—alluding to the act in question—"and his action, with the statute *in force*, is no more binding on his successor than it would have been *without*." The court seemed anxious to avoid the idea that in a matter of this sort Congress would undertake to give any *direction* to the President. This appears from the following passage:

The first section of the act of 1878 authorizes and requires the Secretary of State to receive the moneys paid by Mexico under the convention, and to distribute them among the several claimants, but it manifests no disposition on the part of Congress to encroach on the power of the President and Senate to conclude another treaty with Mexico in respect to any or even all the claims allowed by the commission, if in *their* opinion the honor of the United States should demand it.

The court does not tolerate the idea, although there are some expressions in the act which seem to point that way, that Congress intended to *direct* the President either to distribute or not to distribute these funds, or to investigate or not investigate Mexico's charges against these awards. "The fifth section, as we construe it," said the Chief-Justice, "is *nothing more* than an expression by Congress, in a formal way, of its *desire* that the President will, *before* he makes any payment on the Weil or La Abra claims, *investigate* the charges of fraud presented by Mexico, 'and if *he* shall be of the opinion that the *honor of the United States*, the principles of public law, or considerations of justice and equity, require that the awards * * * or either of them should be opened and the cases retried,' that he will '*withhold payment* * * * *until* the case or cases shall be retried and decided in *such* manner as *the Governments of the United States and of Mexico may agree*, or *until* Congress shall otherwise direct.'" The court here has quoted the very words from the act which seem to reserve some power on the part of Congress to "direct" a distribution of the funds in those particular cases at some future time, and the court has said of the fifth section of the act *including those words*, that it "is *nothing more* than an expression by Congress, in a formal way, of its *desire*," etc. Speaking of the act, the Chief-Justice says: "From the *beginning* to the *end* it is, in form even, only a *request* from Congress."

The words, "or until Congress shall otherwise direct," evidently refer to the *withholding of payment*, and not, as has been maintained on the Mexican side, to any alternative method of retrying the Weil or La Abra claims—not, as has been argued to some *domestic* instead of the

international proceeding pointed out by the words of the act, namely, "in such manner as *the Governments of the United States and Mexico may agree.*" This is shown by the repetition of the word "until." The words, "*it shall be lawful for the President to withhold payment until*" an agreement for a retrial shall be made *between the two Governments*, or "*until Congress shall otherwise direct,*" were not intended to be imperative, and could not be so construed without involving an encroachment by Congress upon the province of the Executive. The court distinctly held that such withholding was in the President's discretion, without any authority from Congress—as completely *without* the statute as *with* it; that of his own motion he could negotiate with Mexico for a new trial of any or all of the claims, and, *while so negotiating*, and UNTIL *the two Governments ceased to negotiate*, he could withhold the funds from the persons in whose favor awards had been rendered. In the following passages from the late Chief-Justice's opinion the court has made its meaning and the scope of its decision clear beyond question:

From the statements in the answer of Secretary Frelinghuysen in the *Key Case* it appears that further evidence has been found, and that President Arthur, upon this and what was before President Hayes, has become satisfied that the contested decisions should be opened and the claims retried. Consequently, the President, believing that the honor of the United States demands it, has negotiated a new treaty, providing for such a re examination of the claim, and submitted it to the Senate for ratification. *Under these circumstances* it is, in our opinion, clearly within the *discretion* of the President to *withhold* all further payments to the relators *until* the diplomatic negotiations *between the two Governments* on the subject are *finally concluded*. That discretion of the executive department of the Government can not be controlled by the judiciary.

* * * * *

ALL we decide is, that it was within the discretion of the President to negotiate again with Mexico in respect to the claims, and that, as long as *the two Governments are treating on the questions involved*, he may *properly withhold* from the relators their distributive shares of the money now in the hands of the Secretary of State.

The decision of the Supreme Court is therefore directly opposed to the views expressed in the majority report in regard to the source and extent of the President's power to withhold or to make distribution of the funds received from Mexico on account of La Abra award.

Mexico bound by the result of her appeal to the treaty-making power.

The proper international measures for determining whether "the honor of the United States" required that Mexico should be released from her engagement of July 4, 1868, "to consider the result of the proceedings of this commission as a full, perfect, and final settlement of every claim," were taken by the two Governments, and a treaty for opening the award and retrying the claim was negotiated between the two republics, acting by their Presidents, and duly submitted to the other co-ordinate depositories of the treaty-making power. Thus the question was brought into the forum in which, and in which alone, in the opinion of the Judiciary Committee of the Senate already referred to, it could be finally determined. The Mexican senate might have rejected the treaty instead of ratifying it. The United States Senate might have ratified the treaty instead of rejecting it. The Mexican senate might have thought it was of more account to Mexico to accept the finality of such international settlements than to make them occasions for new disputes. Amendments might have been proposed in either senate. The principle of mutuality might have been applied in the United States Senate in this case as in the treaty with Venezuela, which provides for a review of *all* the claims, as well those that were *rejected*

as those that were allowed by the Caracas commission; for it is to be remembered that charges have been made by citizens of the United States whose claims were disallowed by the Joint Commission that such disallowance was caused by fraud on the part of the Mexican Government.

Mr. Secretary Bayard seemed to be of the opinion on the 6th of May, 1886, shortly after the rejection of the treaty by the Senate, that Mexico ought to accept the decision as conclusive and final, for he said in a communication of that date to the President—

It seems proper here to observe that by the voluntary negotiation of this second treaty Mexico submitted the question (*whether these claims should be readjudged or no*) to the treaty-making power of the United States, *of which it was well known that two-thirds of the Senate was an essential part*, and that the relief sought from the effects of the former treaty *could only be secured by obtaining such a constitutional majority in its favor*. (Sen. Ex. Doc. No. 140, 49th Cong., 1st sess., p. 4.)

Mexico was just as well aware of the constitutional requirement of a vote of two-thirds in the Senate as any plaintiff ever was in a suit at law that all twelve of the jury must find for him or he will lose his case. The treaty for the proposed review was pending in the Senate four years and was thoroughly discussed and finally rejected *on the merits*. The question of the number of votes required for the ratification of a treaty has nothing to do with the obligation of Mexico to accept the decision as conclusive. She appealed deliberately and knowingly to the treaty-making power, and if the Constitution had required a vote of three-quarters, or of all the Senators present, Mexico would have been no less bound by the result.

It can readily be understood, however, that no matter how willing the Mexican Government might be to submit to the decision of the forum to which it appealed and to bring the controversy to a close, such a result, although greatly to be desired in the interest of international arbitration and peaceful relations between the two Republics, might be detrimental to the interests of the able and astute agent of the Mexican Government, General James E. Slaughter, of Mobile, Ala., and his various associates, who would fail to recover their compensation, so far as it is contingent upon his success under the contract which he made with the Mexican Government "to undertake the proof of fraud" in this case. It is now nearly twelve years since this zealous and indefatigable agent of the Mexican Government entered upon that undertaking and commenced to gather material for the pamphlet or "petition" which he subsequently circulated among members of Congress, and to employ the subagents whose services have been described in the testimony recently taken by the subcommittee. And while it would be to the interest of both Republics that litigation should cease, it would not be so beneficial to those gentlemen who have labored so hard and so long for their compensation contingent upon the annulment of the award in whole or in part.

Whether the stimulus of the contingent fee of \$68,000, provided for in General Slaughter's contract of March, 1877, with the Mexican Government, has had more or less to do with Mexico's false and libelous charges against the company and its officers, which were disproved in the recent investigation, or with the persistency of the attempts in Congress to open the award since the rejection of the treaty for a retrial of the claim, there can be no doubt as to the improper character of the contract and of the proceedings taken under it, as disclosed by the testimony before the subcommittee, or of the flagrant breach of the treaty and of due candor and good faith between nations, of which the Mexi-

can Government was guilty so soon after the adjournment of the commission. Among all of Mexico's "confidential" communications in this case, she never alluded to her contract with General Slaughter of Mobile, Ala., under which, by him or his subagents, so many of the false charges in these communications were really made.

It has been already observed that the majority report makes no allusion whatever to the contract between General Slaughter and the Mexican Government; but the report seeks to cast discredit on the award in connection with the fact that more than a third of the amount—*i. e.*, the sum already distributed—has been expended by the company in paying the expenses incurred in the prosecution of the claim. There is nothing unusual or unlawful in this. Such claims, whether against the United States, like the French spoliation claims, or against foreign governments, like the claim of La Abra Company, are generally prosecuted for compensation contingent upon the result. In this case two journeys to Mexico, and much traveling and labor in that country of the most difficult and dangerous kind, were necessary to obtain the evidence of the company's transactions and of the conduct of the local authorities in the mountainous and isolated district of San Dimas. Then there were the proceedings before the commission, in which the company was represented by distinguished and able counsel; and afterwards, the motion for a new hearing before the umpire, in which the late Jeremiah S. Black was retained as special counsel for the company. The work done by and on behalf of the company from 1869 to 1876 in establishing and defending its claim was enormous, and the company having lost all its property in Mexico was obliged to make the best arrangement it could for the prosecution of its case. But this is a very different thing from the conduct of the Mexican Government in employing a citizen of the United States, under such a contract as that with General Slaughter, upon a contingent compensation "to secure *the necessary testimony*" to subvert an award to which Mexico had solemnly bound herself by treaty "to give full effect" "without any objection, evasion, or delay whatsoever," and in respect of which she was negotiating with the United States through the proper diplomatic channels at the time of the employment. If General Slaughter had been a distinguished lawyer or diplomat, his contract with the Mexican Government would have been no less improper and reprehensible, but his description of himself (Appendix, p. 912), as "a contractor in the improvement of rivers and harbors and railroads, *etc.*", domiciled in Alabama since 1870, makes his employment for the work to be done in *Mexico* and in *Washington*, as specified in his contract, a most singular and significant act on the part of the Mexican Government. The text of the contract will be found in the appendix to this report.

There are other objections to the bill, notably that it seeks to change the established principles of law governing the opening of judgments and decrees, and that it might subvert La Abra award in whole or part for causes which would not be allowed to disturb a judgment or decree of a municipal court. A statement of these other objections will be found, with the authorities sustaining them, in extracts from a brief of counsel already referred to in an appendix to this report.

It is now nearly three years since Mr. Secretary Bayard, in the communication already cited, invited attention to "the *present status* of these claims (awards) and *the duty of the Executive* under an *existing treaty*, to which the force and effect of *paramount law* is given by the *Constitution*, in the event of the adjournment of the two houses without further action in reference thereto." In the light of this suggestion

and of the opinion of the Supreme Court in *Frelinghuysen v. The United States*, and of the report of the Judiciary Committee of the Senate on a similar bill, and of the action of the Department of State in twice making distributions on account of La Abra award in different administrations, notwithstanding the act of June 18, 1878, it seems clear that the President has never been under any obligation to wait upon Congress in this matter. He should have distributed the money to the persons to whom it belonged as soon as the treaty for a review of the contested awards was rejected by the Senate, unless it was his intention to negotiate another treaty, involving a retrial of the company's claim. An evasion of an executive duty is hardly less dangerous than an act of executive usurpation. The bill should be indefinitely postponed, the controversy closed, and the treaty executed by the distribution of the funds in hand to the credit of the award.

APPENDIX.

OBJECTIONS TO THE BILL (S. 2632).

The bill is an attempt at special legislation in this, that it would change the rules of law governing the opening of judgments and the granting of new trials.

[Extracts from a brief submitted by Messrs. Shellabarger & Wilson, of counsel for La Abra Company, to the Committee on Foreign Relations, and printed for its use, May 2, 1888.]

The proposed suit, as defined by the pending bill, is one which proposes to supply Mexico, in her attack upon this award, with *rules of law*, in aid of her attack, that are not afforded to *any other* suitor in *any other* case, either in England, or this country, or any civilized nation.

In Cooley's Constitutional Limitations, pages 391 and 392, and in note 2, the salutary rule of law upon this subject is thus stated:

"On principle, it can never be within the *bounds* of legitimate legislation to enact a *special law*, or to pass a resolve *dispensing with the general law in a particular case, and granting a privilege and indulgence to one man by way of exemption from the operation and effect of such general law, and leaving all other persons under its operation.*

"Such a law is *neither just nor reasonable* in its consequences. It is our boast that we live under a government of *laws* and not of men; but this can hardly be deemed a blessing unless those laws have for their immovable basis the great principle of *constitutional equality*. Can it be supposed for a moment that, if the legislature should pass a *general law*, and add a section, by way of *proviso*, that it should never be construed to have any operation or effect upon the persons, rights, or property of Archelaus Lewis or John Gordon [in this case *La Abra*], such a proviso would receive the sanction or even the countenance of a court of laws?"

This *special aid* and favor, establishing rules of trial and adjudication in favor of Mexico and against the American citizen, which this bill proposes, but which is denied to all other litigants, is this: It is perfectly settled law, as laid down in *The United States vs. Throckmorton*, 98 U. S. R., 61 (and in effect repeated in 101 U. S. R., 947; 111 U. S. R., 520, and 112 U. S. R., 32), that no fraud will set aside a judgment or award, except (to here quote the words of the Supreme Court), "those which are *EXTRINSIC* or *COLLATERAL* to the matter tried, and not a fraud which *was in issue* in the former case."

It has been claimed that this rule of evidence asserted in *Throckmorton's* case, 98 U. S. R., 61; also in 101 U. S. R., 477; 111 U. S. R., 520 and 112 U. S. R., 32, has been in some way qualified or overruled in *Minor* against *The United States*, 114 U. S. R., 233. This is an utter mistake, and the law of *Throckmorton's* case (*supra*) is as firmly fixed as any principle of our law. This case of *Minor's* re-affirms, adheres to, and repeats the law as above cited from *Throckmorton* (see this in 114 U. S. R., 241 and 242). And *Minor's* case simply holds that, in an *ex parte* proceeding before the land officers, where there is no adversary element in the case, where witnesses are not examined and cross-examined, but everything is on one side, and a fraud is thus perpetrated in securing a patent, there the principles of the *Throckmorton* case do not apply.

But we submit that it is too late in the history of international awards for any one, even though having the reckless courage of Mexico, to assert that an international trial, secured through an international treaty, where the commissioners are sworn as quasi judges, where testimony is taken upon examination and cross-examination, and where the right for *both sides* to appear by counsel is secured, as is done by the second article of the treaty under which this award was made (see treaty of July 4, 1868, volume Public Treaties of The United States, 510), and where the treaty makes the decision of the commissioners or umpire "absolutely final and conclusive upon each claim decided," is a mere *ex parte* and non-judicial proceeding, like the one described by Justice Miller (on p. 240, 114 U. S.) in *Minor's* case.

The treaty itself makes the trial strictly one *inter partes* and adversary; and the testimony taken in this one case of La Abra, upon examination and cross-examination (and which has been printed in book form and was presented to committees of Congress and is now accessible to the Senate committee), forms an immense mass, the mere printing of which cost the claimant about \$1,500. And as to the decision reached in the case being a judgment of an international court the law is equally settled. On this point the language of the Supreme Court, in the most elaborately-considered case regarding such an award ever decided by that court, is that "their" (the commissioners') "decision within the scope of their authority is conclusive and final" (*Comegys et al. vs. Vasse*, 1 Peters, 212).

In *Judson vs. Corcoran* (17 How., 612) the same court decides that these international trials are so thoroughly adversary and judicial in their nature as that they pass the legal title to estates decreed or adjudged thereby.

The finality of such judgments as these is again repeated in the case of *Key vs. Frelinghuysen* (110 U. S., 72).

Observe that, so far as the point of finality is concerned, it is here alluded to not for the purpose of showing that a treaty can not set aside this award, but simply for the purpose of establishing the grade, or rank, or class, or dignity to which these decisions belong; that they are not *ex parte*, as was the decision in Minor's case, but are pre-eminently adversary, and judicial, and final.

But this present bill carefully, and on purpose, proposes to ignore and abolish this rule, and not only to retry the question of alleged fraud, which was in issue before, and was tried by the commissioners and by the umpire, Sir Edward Thornton, but it proposes to overthrow that award either in whole or, at least, in part, provided any part of it was influenced in its procurement by, not *perjury*, but any "false swearing" (see sec. 1 and sec. 4). So that the effect of this bill is, first, to supply, in the United States, a champion to fight Mexico's battles and pay her expenses; and then it proposes to set aside this award, if its procurement was in *any degree* produced by "false," though perfectly *honest*, opinions, regarding value, or the like. And the committee will never forget that it is not pretended, and never will be, that the time given to Mexico, by the United States, for procuring evidence of said alleged fraud (more than five years during which the Commission was in session) was not ample, or that the trial was not perfectly fair and entirely free from any "extrinsic fraud," preventing or tending to prevent a fair trial of the issues.

The bill would set the award aside for an alleged exaggeration of damages, which the House Committee on Foreign Affairs in the Forty-ninth Congress found to be not proved by Mexico's so-called "new evidence."

Our next point is that this bill proposes to set aside the award, not upon the ground that this property of the American claimant was not taken by Mexico, but upon the ground that the damages were *exaggerated*.

The utmost that was asserted by Mr. Evarts, in the statement which is, in part, quoted in the first "whereas" of this bill, was that there was evidence tending to show that the damages were "exaggerated," and only exaggerated. And we are glad, on this point, to be able now to state that, in his last official communication on the subject to the President, the present Secretary of State explicitly adopts and emphatically repeats the conclusion of Mr. Evarts, to wit, that this is only a case of alleged "*exaggeration*" of damages.

This letter of Secretary Bayard, dated 28th of February, 1888, and found in Executive Document No. 109, Fiftieth Congress, first session, can not, we regret to say, be regarded as friendly to the American side of this controversy; and yet, in this last communication, the Secretary has the justice to state as follows (see page 6):

"Nor can the payment, by Mr. Evarts, of certain installments of La Abra award be regarded as inconsistent with his recommendation of investigation in that case, since the allegations of fraud in relation thereto (La Abra award) affect only the *measure of damages*, and *not*, as in the Weil case, the question *whether any ground of claim ever existed*."

Here, then, confessedly, the *only* objection to the award is that the damages were too large, and yet on this point, at the last Congress, a committee of the House, after full investigation, finds that the damages are amply justified by proofs which remain unimpeached by Mexico's so-called "new evidence." We quote the words of the majority of the committee, which we confidently submit are fully justified by the testimony, a summary of which will be found cited in the views of the minority, embodied in Senate Report No. 1454, first session, Forty-ninth Congress, at page 11 *et seq.*, to which, and to the book of evidence there cited, we beg the attention of the committee.

The finding of the House committee, referred to above, upon this sole question of

exaggerated damages, is stated by Mr. Daniel in his report (No. 3474, H. R., Forty-ninth Congress, first session, page 29) as follows:

"But this remains, when all that can be said in favor of the interference proposed has been considered, *that there was ample evidence before Sir Edward Thornton, that is not impugned by any new evidence, to have sustained and warranted his award*; that the award did not embrace damages on account of the items that have been surcharged or apparently falsified; that that award was far below what was claimed; that it was far below, in amount, the damage which, in the opinion of unimpugned witnesses, the claimant's company suffered; that it did not embrace speculative damages; that the mistreatment of the company, by Mexican officials and people, is proved by their own testimony; and that, conceding all that, by reasonable intendment, the newly-discovered evidence proves, the award made had ample foundation in testimony not successfully impeached, and was not in excess of fair compensation for losses suffered, according to that testimony. * * * Mexico had full and fair hearing. The great mass of cases was decided in her favor, and the only maxim which we conceive is now wisely applicable to this claim is that which tells us it is to the interest of the Commonwealth that litigation should cease."

The bill would submit a political question to the courts.

The next point we desire to submit is that the bill in the provision attempting to give jurisdiction to the Supreme Court is clearly unconstitutional, because it is an attempt to submit a *political* as distinguished from a *judicial* question to the judgment or decree of the Court of Claims, and, on appeal, to the Supreme Court of the United States.

On this point we wish to, if possible, make the matter plain. Our point is not that the United States can not sue a wrong-doer for the recovery back of moneys fraudulently obtained from the Government. It is abundantly settled that such suit can be maintained. Neither is it our present point that the "finality" given to an international award by treaty is such that the award could not have been attacked by a *proper* suit, brought by the *proper* party, and conducted under the known rules of law applicable in such a case. Nor is it our present point that Mexico could not, at the proper time and before her appeal to the proper diplomatic forum, where she has just been defeated, prosecute a suit to determine whether the Abra award, made by the Mixed Commission, was obtained by such fraud as would, on legal principles, overthrow or justify the re-opening of the award. But, on the contrary, the present point is this, that the question which the pending bill proposes to submit to the courts for trial is, in substance and legal effect, as to what the President and Secretary of State shall do with the money now in the possession of the Secretary, and hereafter to come into his hands, paid in by Mexico upon the said award.

As to this, keep, now, please, carefully in mind the following preliminary suggestions, bearing upon the present point:

First, that in the paragraph by Mr. Evarts, recited in the first part of the preamble to this bill, it was, by Mr. Evarts, distinctly declared that neither international law, honor, nor equity demanded or permitted a new international trial, such as that named in the fifth section of the act of 1878; and he, in addition, there stated that the investigation which was needed was simply an *ex parte* investigation by the United States, through its own instrumentalities, for the purpose of ascertaining whether in fact the damages had been "exaggerated." The thing, therefore, recommended by Mr. Evarts in the passage quoted in the preamble of the bill, was not at all a suit "at law or in equity," within the sense of these words, as embodied in article 3, section 2, of the Constitution of the United States, declaring that "the judicial power" shall extend to all cases in law or equity arising under this "Constitution," etc. On the contrary, he had just discarded the right to resort to an international trial *inter partes*, upon the case as it then stood before him; and the further and more thorough investigation which he suggested, and for the means of making which he said that the Executive was dependent upon Congress, was, as we understand his meaning, not only to be *ex parte*, but was intended merely to satisfy the conscience of the United States, by removing doubt, and to enable the Executive to determine definitively what further action, if any, might be required. We respectfully submit that this further investigation has now been thoroughly made. No extra-judicial examination could be fairer or more thorough than that which was made by the House committee last session, from whose majority report, ten to three, we have already quoted. Nor was it *ex parte*. The Mexican Government was represented by its distinguished and accomplished agent, Mr. Foster, and learned counsel besides; and had every possible advantage at the different sessions in presenting its case, for many matters on its side were considered which would be excluded by the rules of law at a regular trial.

Next carefully observe that the United States does not and never did pretend to have the slightest *property* interest in this money, and which is requisite to enable it to sue touching the money. Therefore, the suit which is to be prosecuted under this

bill is, in its characteristics and objects, a *political*, as distinguished from a *judicial*, inquest, precisely like the one recommended in the passage from Mr. Evarts, partly quoted in the preamble to this bill; and is a suit, in its design and general result, simply *advisory* to our Executive touching its duty regarding this money. And so the bill itself, in certain passages, treats and regards the matter. It does not contemplate or authorize any judgment or decree upon which *process of execution* or other process to enforce the decree is contemplated or is possible. On the contrary, it provides, in section 4, what the President shall do in the event of a certain finding in favor of Mexico; namely, he shall release Mexico, and return certain moneys paid in. And also provides, in section 5, in case the decision is in favor of La Abra, that the Secretary shall pay La Abra the moneys paid in.

It is thus seen that the lawsuit proposed is one by the United States, in regard to moneys in which it has *no property interests* whatever, and is simply the conduit through which the money passes on its way from Mexico to the American awardees. It will be also observed that the proposed suit is not in the nature of "a bill of interpleader," filed by a stake-holder, for direction by the court, as to what shall be done with the money. This is so because, first, it is not proposed to make Mexico a party to this bill; and because, second, the question (as we shall presently see) which party shall get this money is not a *judicial* question in its nature, but a *political* one.

With these preliminaries kept carefully in mind, turn now to the inquiry what the law is as to the possibility of giving the Supreme Court of the United States jurisdiction to decide, or adjudge, or decree, or advise regarding such political questions. And in answer to this last inquiry notice, first of all, that the question proposed to be submitted to the courts has been *finally decided and closed by the action of the treaty-making power in finally rejecting the treaty providing for a new trial*. This being so, the action of the political branch of the Government is conclusive upon the courts, and the courts to which it is proposed to send this case for determination can not decide it otherwise than as it has been decided by the treaty-making, or political, branch of the Government.

In order right here to make plain what we mean, take this illustration: Suppose this bill were, in express words (as it is in legal effect), one directing the Court of Claims, and, on appeal, the Supreme Court, to *decide whether a new treaty ought to be made, providing, as the one recently rejected did, for a new commission and international trial*. Is there anybody that would say that such a question can be submitted to the Supreme Court?

Of course there is not. And yet this is, in effect, precisely what the present bill does, as we have seen. That no such political question, or *non-judicial question*, whether political or not, can be sent to the Supreme Court by an act of Congress, is thoroughly settled. On this point turn first to the opinion by Chief-Justice Taney, found in *Gordon vs. The United States*, reported in 2 Wallace, 561, and then to the opinion in that case found in the appendix to 117 U. S. R., page 698. There this subject is examined with great fullness. And the pith of the decision is embodied in the following statement, from page 702, 117 U. S. R., by the Chief-Justice:

"Nor can Congress authorize or require this court to express an opinion on a case where its judicial power could not be exercised, and where its judgment would not be final and conclusive upon the rights of the parties, and process of execution awarded to carry it into effect."

A question in legal principle like this was submitted to Caleb Cushing, as Attorney-General, and was answered in his opinion of November 25, 1855 (7 Opinions, 599), where he decided what is thus expressed in the head-note:

"The question whether the United States will pay, according to their original tenor, drafts drawn by the Mexican Government under the Macilla convention, or suspend payment at the subsequent request of the said Government, is a matter of POLITICAL and not of LEGAL determination."

The same legal question is decided in scores of cases by the Supreme Court; these holding that the judicial powers and the political powers of the Government must be constantly kept distinct and the one not to encroach upon the other, and that, wherever the *political* department of the Government has settled a non-judicial question (as the political department has settled this, by rejecting a treaty providing for a new trial) in a given way, there the judicial department can not overrule or inquire into the wisdom of that decision. This will be found in, amongst others, the following cases:

Luther vs. Borden, 7 How., 1, 11.

White vs. Hart, 13 Wall., 649.

Phillips vs. Paine, 92 U. S., 132, and the cases there cited.

United States vs. Lee, 106 U. S., 209.

The Exchange vs. McFadden, 7 Cranch, 116.

State of Georgia vs. Stanton, 6 Wall., 50.

Even the case of *Frolinghuysen vs. Key* (110 U. S., 70 *et seq.*) is one where this doctrine of the want of power, even in "Congress, to 'encroach' upon the power of the

President and Senate to conclude another treaty with Mexico," and to determine whether a new international trial ought to be granted, is more than indicated—is in effect asserted.

After stating that the fifth section of the act of 1878 (20 Stats., 144) provided for a certain distribution, the court (p. 74) adds:

"But it manifests no disposition, on the part of Congress, to *encroach* on the power of the President and the Senate to conclude another treaty with Mexico in respect to any, or even all, the claims allowed by the Commission, if in *their* opinion the *honor* of the United States should demand it."

Then, lower down, the court says:

"From the beginning to the end it is, in form even, only a *request* from Congress to the Executive. This is far from making the President for the time being a quasi judicial tribunal to hear Mexico and the implicated claimants, and determine once for all between them whether the charges which Mexico makes have been judicially established. In our opinion it would have been just as competent for President Hayes to have instituted the same inquiry *without* this *request* as with it, and his action with the statute in force is no more binding on his successor than it would have been without."

If this case, therefore, shows, on this aspect of the matter, anything, it shows that the court regarded the question of granting a new trial to Mexico as a *political* or *diplomatic* one, which even Congress could not interfere with farther than to make a "*request*" as distinguished from a *law*.

And it results, *a fortiori*, that it is impossible for Congress to send to the Supreme Court, for its decision, this *non-judicial* inquiry regarding what is required of the Executive by considerations of "*honor*," political morality, or public expediency.

A fair retrial is now an impossibility. Death of the company's witnesses.

Our next proposition is that it is flagrantly and manifestly unjust to now overthrow this award by this one-sided and partial trial to be had under rules unknown in all civilized States, and this at a time when all the witnesses that could know anything about this alleged fraud are dead.

The following statement in regard to witnesses now deceased, whose depositions on behalf of the company were filed with the Joint Commission, is taken from the company's letter to Mr. Secretary Bayard, dated October 15, 1887, printed in Ex. Doc. No. 109, Fiftieth Congress, first session.

Among those of the utmost importance to the company who have died are George C. Bissel, a superintendent of mines adjoining La Abra mines; John P. Cryder, a lawyer and miner residing in Mexico; Francis F. Dana, for twenty years a resident of Mexico, and a lieutenant-colonel in the Mexican army in the war of the French invasion; A. W. Adams, the agent of the company in the taking of the testimony of its witnesses; George C. Collins, the president of the company during the period when the claim arose; Thomas J. Bartholow, the first, and Charles H. Exall, the last, superintendent of the company, and the alleged author of the alleged letters constituting the alleged *newly-discovered evidence of Mexico*. Much, and the most important part, of the evidence of these witnesses can not now be supplied, and especially that of the said superintendents. Their testimony as to the newly-discovered evidence, to wit, the letters alleged to be theirs, would be indispensable. Those witnesses just enumerated, who are dead, are the only witnesses who could possibly know anything about the truth or falsity of the newly-discovered evidence upon which, mainly, Mexico has based this demand for a new trial.

Testimony could not now be taken for the company in Mexico.

Another reason is the impossibility of the company now taking testimony in Mexico. The transactions to be proved occurred twenty years ago, and it is nearly twelve years since the award was made. The proposed evidence if taken at all must be sought in a mountainous, almost inaccessible mining district in the State of Durango, and among a semi-barbarous people, which (as is the case in all mining localities) is a constantly changing population. After such a lapse of time in such a locality and among such a people and after the failure of memory, the disappearance and death of witnesses, the taking of such testimony is palpably and literally impossible. Add to all this the enormous expense attending the quest for evidence and the taking thereof, and it needs but be stated to any one having the slightest experience

regarding trials in human courts to make it obvious that the obstacles to the procurement of such evidence (whatever the facts may be) are simply insurmountable.

But if *these* obstacles were not insuperable, the hostility of the Mexican officials would be. Before, when there was comparatively no excitement about the case of said company, other than such as resulted from the fact that the company was American, the quest for evidence had to be made under armed protection to the life of the company's agent, and at the expense of an accompanying armed guard hired at the sea-port Mazatlan. And to deter and prevent any testimony being given in favor of said company, the Mexican judge of that district threatened and intimidated the witnesses who were brought before him by the company's agent; and he declared that he would take no testimony for the company when its attorney was present, and declared that none should be taken in his court that would aid the company; and he incited manifestations of mob and other violence, such as endangered the life of witnesses, attorneys, and others evincing friendliness to the company. Besides all this, its witnesses were spirited away and kept from testifying. All these supremely disgraceful proceedings are matters of record, and are before you in the case. And now, after the hue and cry which has been made about this case, no witness resident in Mexico, and especially in that district, who should hereafter testify the truth in favor of this American company, would be permitted to live in that country, or dare to testify, and no man competent to ascertain and select the proper evidence would hazard his life by going there and attempting to obtain it. The recent foul murder of the superintendent of the mines of an American company (Mr. Baldwin), situate in the same State of Durango, and in the same general locality, "for no other crime than that he was an American," is only one more of the many evidences that the hostility in that district, which expelled the Abra Company, there still bears sway, and with all the fullness of its pristine vigor.

The President's hands are not tied by the act of June 18, 1878.

[Extract from Report No. 1630—Views of Minority—Senate, Fiftieth Congress, first session, p. 112.]

In vindication of this position of the Judiciary Committee that said fifth section was not intended to and does not bind the hands of the State Department regarding the payment out of this money, I now restate some of the grounds in support of that opinion, and, as a matter of saving labor, I state them in the language of counsel, addressed to your committee, in reply to a question from a member of the committee asking whether said section five did not tie the hands of the Secretary of State. That reply was in these words:

"Senator MORGAN. You admit his hands are tied.

"Mr. SHELLABARGER. No; but the President seems to take that view. By no means—we do not admit it."

So far from admitting it, we submit, with very sincere respect, that it is palpable and literal upon the face of section 5 of this act of June 18, 1878 (20 Stats., 145), that it does not, in regard to said matter of paying out said money and executing the said treaty, tie the President's hands. On this point please observe carefully the following things:

(1) That the language of section 5 is expressly put in the shape of a request as distinguished from a command or law. The words are:

"He (the President) is hereby *requested* to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity, require that the awards in the case of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards or either of them until such case or cases shall be retried and decided in such manner as the Government of the United States and Mexico may agree upon or until Congress shall otherwise direct."

Thus you see the letter of the statute is, first, only a request to investigate; and, secondly, only a permission or a making of it *lawful* for the President to temporarily withhold payment.

(2) That even in the case of *Key vs. Frelinghuysen*, in which Mexico takes such supreme delight, the court expressly takes the same view of this statute. The court says, in so many words, speaking of this statute, that "*from beginning to end it is, in form even, only a request from Congress to the Executive.*" Thus the court covers by its words "from beginning to end" every passage in this statute, including section 5, and says of it that it is only a request (110 U. S., 74).

Then the court, coming more explicitly to this very section 5, says of it:

"The fifth section, as we construe it, is *nothing more* than an expression by Congress in a formal way of its *desire* [not its command in the shape of a law] that the President will, before he makes any payment on the Weil or La Abra claims, investigate the charges of fraud presented by Mexico."

Thus you see the court says precisely what we say about this section 5, that it is not a command of law, but simply a recommendation. Then the court adds, on the same point, same page, regarding this law being only a request, these words:

"In our opinion it would have been just as competent for President Hayes to have instituted the same inquiry without this *request* as with it; and his action with the statute in force is no more binding on his successor than it would have been without."

Then, on top of the same page, the court indicates its opinion that any command by Congress addressed to the President and the treaty-making power would be an encroachment by the legislature upon the Executive power under this treaty.

The court says, speaking of this act of Congress:

"But it manifests no disposition on the part of Congress to encroach on the power of the President and Senate to conclude another treaty with Mexico in respect to any or even all the claims allowed by the Commission, if in *their* opinion the honor of the United States should demand it."

(3) Not only do the letter of the statute and this interpretation of the Supreme Court show the President's hands are not tied by any prohibition against paying this money and executing the treaty, but the concluding sentence of the letter of Secretary Bayard to the President, communicated to Congress in the President's special message of May 11, 1886, shows that Mr. Bayard did not regard his hands as tied by this statute two years ago. At that time he indicated his view of the President's constitutional obligation to execute the laws of the land as follows:

"To relieve the action of our Government from any ambiguity of legislative expression or the Executive from any uncertainty as to the line of duty in relation to the awards in favor of Benjamin Weil and La Abra Silver Mining Company under the treaty with Mexico promulgated February, 1879 (1869), I suggest that the attention of Congress should be earnestly invoked to the consideration of the present status of these claims referred to and the *duty of the Executive under an existing treaty, to which the force and effect of paramount law is given by the Constitution in the event of the adjournment of the two houses without further action in reference thereto.*"

(4) It is equally plain that if section 5 of this act of 1878 ties the hands of the President at all, regarding the execution of this treaty, then the prohibition of payment applies to the whole of the two awards, and not merely to a part. Therefore, when under the administration of the State Department by Secretary Evarts payments were made, and when like payments were made under the administration of that Department by Secretary Blaine, these officers violated the prohibition contained in section 5, if such a prohibition exists.

Contract between General Slaughter, of Mobile, Ala., and the Mexican Government.

This agreement, made this twenty-ninth day of March, A. D. 1877, by and between General James E. Slaughter, of Mobile, Ala., party of the first part, and Señor Don Ignacio Mariscal, minister of Mexico to the United States, party of the second part.

Witnesseth, that the said party of the first part agrees, for the considerations hereinafter named, to *undertake the proof of fraud* in the claim of the La Abra Mining Company against the Government of Mexico, which claim is numbered four hundred and eighty-nine (489) on the docket of the Joint Commission of the United States and Mexico and has been adjudicated by the umpire of said Commission.

To this end the said party of the first part agrees to send an agent to Mexico for the purpose of securing testimony in proof of the fraudulent character of said claim; to pay the expenses of such agent as far as the City of Mexico; and to secure such assistance as may be necessary in preparing the evidence so obtained and presenting the same to the proper authorities of the Government of the United States.

The said party of the second part, *acting for and in behalf of the Government of Mexico*, hereby agrees to secure the payment by said Government of all expenses incurred by the said agent of the party of the first part, after he shall have arrived in the City of Mexico; to see that *all facilities* are furnished by said Government to enable him to secure the *necessary testimony*, and to pay, by draft payable as hereinafter specified, one-half of the expense incurred by the said party of the first part in the preparation of evidence and the presentation of the same to the proper authorities of the Government of the United States; provided, that such expense shall not exceed the sum of three thousand dollars (\$3,000.00) American currency.

And the said party of the second part further agrees, in consideration of the services above named, to pay to the said party of the first part, by drafts upon the national

treasury of Mexico, payable in Mexican gold ten months after presentation at said treasury, a sum equal to ten (10) *per centum* of any portion of said claim which may be waived or finally withdrawn by the proper authorities of the Government of the United States, or of its total amount if it be waived or withdrawn in the same manner; said drafts to be drawn by the minister of Mexico at Washington immediately upon the final waiver or withdrawal of said claim or any portion thereof, as the case may be, by said authorities of the United States Government.

In witness whereof we have hereunto set our respective hands and seals this twenty-ninth day of March, A. D. 1877.

JAMES E. SLAUGHTER.
IGNACIO MARISCAL.



Senate documents

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